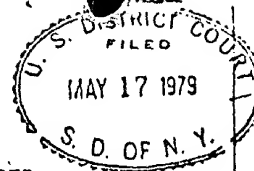


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
UDITH CLARK, et al.,

Plaintiffs,

- against -

UNITED STATES OF AMERICA, et al.,

Defendants.
-----x

AMENDED
PROTECTIVE ORDER

78 Civ. 2244 (MEL)

Plaintiffs having moved this Court for an order to protect the discovery process and to further the interests of justice, and the Court having duly considered the matter, it is ORDERED that:

1. No document identifiable with any plaintiff in the possession, custody or control of the individual defendants or Government agency defendants shall be destroyed or obliterated in any manner pending a final determination of this action, including any appeals, or upon further order of this Court:

2(a). All documents referred to in, and protected by this order shall be placed and maintained under supervisory control of the Court in the physical custody of any person or agency now in possession of such records who shall be responsible for the physical integrity of the documents. Any defendant which has in its possession any of the documents shall be bound by its terms.

3(a). A copy of this order shall be circulated to each field office and legal attaches of the Federal Bureau of Investigation ("FBI") as well as any organizational unit within the headquarters of the FBI. Additionally, copies of the order will be circulated to appropriate officials of the Postal Service and Department of Justice having custody of documents identifiable to any plaintiff.

D. NOT Remove
RETAIN AS TOP SERIAL

Q

SEC. 3

62-118405

NOT RECORDED

JUN 11 1979

Greenberg/Gray-2424

(b). A copy of this order shall be placed in each volume or section of all FBI main files identifiable as relating to plaintiffs.

(c). The FBI shall prepare an index of all main files referred to in 3(b) above, specifying the serial numbers of documents contained in each file and the location of each file. A copy of the index shall be furnished to plaintiffs' attorneys ^{for each party} and to the Court.

4. Documents protected by this order include (a) all records of any kind and description which have been garnered in connection with past and present investigations and may be garnered in connection with future investigations of any plaintiff, including but not limited to records which are identifiable to plaintiffs though contained in records pertaining to investigations of organizations or individuals with which any plaintiff may have had or may have affiliations, and (b) directives or guidelines governing the conduct of such investigations, including but not limited to the FBI Manual of Instructions and Attorney General Guidelines.

5. All documents compiled in the course of the prosecution or defense of United States v. Gray and United States v. Felt and Miller, 78-000179 (Bryant, C.J.), excluding attorneys' work products, shall be subject to the provisions of paragraphs 1 and 2 of this order. At the conclusion of the prosecutions, all documents covered by this order shall be maintained in the custody of attorneys, or their successors in control of such documents pending final determination of this action.

6. Nothing in this order shall preclude the handling, necessary marking of documents, or necessary alteration of copies of documents in the ordinary course of business or trial preparation by anyone in possession of the documents.

7. It is the intent of the Court that this order shall be broadly construed so as to prevent the destruction of any documents. In the event of any question by ^{any} defendants ^{msx} concerning the scope and coverage of this order, or any action concerning whether any particular documents come within the designated scope and coverage of this order, the documents in question will not be destroyed or obliterated in whole or part, until either: (a) they are presented to ~~the attorneys for the other parties~~ ^{The attorneys for the other parties} ~~plaintiffs and plaintiffs' attorneys~~ ^{such parties,} for examination and ~~plaintiffs~~ by their attorneys, stipulate in writing that the documents may be destroyed or obliterated in whole or part; or (b) the Court, after a hearing duly noticed, exempts the specified documents in question from its order.

8. In addition to specific instructions concerning communication of the contents of this order contained herein, defendants and their attorneys shall communicate the contents of this order forthwith to all appropriate individuals so as to assure the effectuation and compliance with the order by all persons.

9. Within 30 days, defendants shall report to the Court all steps taken so as to assure the effectuation and compliance with this order by all persons.

Dated: New York, New York

~~APRIL 18~~, 1979
May 16

Monmouth College
United States District Judge

ADIC, New York

7-3-78

Director, FBI

U. S. vs. L. PATRICK GRAY III, ET AL
DISCOVERY PROCEEDINGS

Per instructions of Departmental Attorney Francis J. Martin, the original New York copies, including all subs and June files on the following individuals, were to be transferred to FBI Headquarters' custody and retained there for the duration of the prosecution:

CAPBOM
PENBOM

b6
b7C

Xerox copies of the original files were made at FBI Headquarters and the copies were returned to New York.

A copy of this communication should be placed as an unserialized cover at the top of each volume of the copies returned to New York to explain the present location of the originals of these records.

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

REC-110

14 AUG 31 1978

Greenberg/Gray-2427

FBI/DOJ

4 SEP 14 1978

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

TO : Mr. McDermott

DATE: 7-7-78

FROM : Mr. Bassett *HNTB*

SUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL

PURPOSE: To advise of date set for pretrial discovery motions.

DETAILS: On July 6, 1978, Francis J. Martin, Department of Justice, advised Special Agent [redacted] the pretrial motions would be heard in the United States District Judge Bryant's court room at 9:30 a.m. on Wednesday, July 12, 1978. Mr. Martin assumes the hearing will be open and will be crowded. He specifically requested Mr. Mintz be advised on behalf of the Director and Mr. Boynton because of media interest.

RECOMMENDATION: None, for information.

PUD/est

*Dir. adv.
jim*

APPROVED: _____
Director _____
Assoc. Dir. *Jim* _____
Dep. AD Adm. *as* _____
Dep. AD Inv. _____
Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. *HAS* _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____

REC-110

14 AUG 31 1978

- 1 - Mr. McDermott
- 1 - Mr. Bassett
- 1 - Mr. Mintz
- 1 - Mr. Boynton

Greenberg/Gray-2428



8 SEP 14 1978
JLT:dmd
(5)

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

TO : [redacted] b6
FROM : [redacted] b7C
SUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL b2
NEWARK FILE [redacted] b7D

DATE: 7-10-78

Enclosed is a copy of captioned file furnished to me by Francis Martin. It includes serials one through seven, including serial A-1 and the pink sheet.

The original of this file was furnished to us a short time ago by Martin. It was not in a separate file back and both serials one and serial A-1 were missing.

In the attached copy, serials one and A-1 are marked "GOV'T EX." Martin indicated he had retained the originals since the Government might introduce them into evidence.

Martin has stated he does not know whether his office received the [redacted] file in a file back, disassembled and added it to the [redacted] file, or whether it was already a part of Section 1 in the [redacted] file when he received it.

The attached copies should be added to the [redacted] file and processed at the same time, since it includes two missing serials. A-1 is a duplicate copy of a serial in the [redacted] file.

Enclosure

1 - [redacted] (Enclosure)

JLT:dmd
(2)

9- ENCLOSURE

Orig attached to this
copy - [redacted] will hold
REC-110

b6
b7C

62-118045-48
14 AUG 31 1978

8 4 SEP 14 1978

Greenberg/Gray-2429

62-118045-48
ENCLOSURE

Security Informant Review Sheet
FD-238 (Rev. 10-27-72)

Date 1/12/73

Mark opposite each item the number of the serial or serials in which the information appears. Although these items are regarded as nonvariable, changes may be noted by adding the new serial number and crossing out the old. When form is complete as to all applicable items, the Agent and Field Supervisor should initial the form at the end.

Symbol Number

b2
b7D

Office File

b2
b7D

Type of Informant: ☐ SI ☐ PSI ☒ CS

Bureau File _____

Serial No. _____

1. Name _____

2. Aliases _____

3. Code Name _____

4. Bureau advised of Symbol _____

5. Date and Place of Birth _____

6. Description _____

7. Photograph _____

8. Background Investigation:

(A) File references checked _____

(B) Local Criminal Check _____

(C) Bureau Identification Record _____

(D) Selective Service Check _____

(E) Check of Armed Services Record _____

(F) Informants Canvassed _____

(G) Reliability Check _____

(H) Patriotism _____

(I) Reputation _____

9. Informant Advised Of:

(A) Not Bureau employee _____

(B) Activities Voluntary _____

(C) Relationship Confidential _____

(D) Bureau Labor Policy _____

(E) Not to Retain Copies of Notes - Reports _____

(F) Report to be submitted under Code Number and in Third Person _____

(G) Payments are Income _____

(H) Use Public Telephones _____

(I) No Office Contact Personally _____

10. Statement of Cooperation _____

11. Post Office Box Number Assigned _____

12. Informant Indices Card Made _____

13. Agent Who Handles Information _____

14. Alternate Agent _____

15. Concealment and Characterization Guide _____

16. Flash Notice Placed _____ or Removed _____

17. Coverage _____

No Serial Number:

Keep on Top of Other Serials in File.

Initials _____

Agent

Supervisor

Greenberg/Gray-2431

Court Ex

FBI

Date: 1/11/73

Transmit the following in

CODED

(Type in plaintext or code)

TELETYPE

URGENT

Via

(Priority)

TO ACTING DIRECTOR, (88-56609)
ATTN: DOMESTIC INTELLIGENCE DIVISION *mbt*

FROM NEWARK [REDACTED] (P) ^{b2}_{b7D}

ON 1/10/73, A CONFIDENTIAL SOURCE WAS DEVELOPED AT [REDACTED]

[REDACTED]

(BUFILE 88-56609). THIS CONFIDENTIAL SOURCE IS IN A POSITION
TO FURNISH INFORMATION REGARDING SUBJECT'S PARENTS WHICH MAY
POSSIBLY LEAD TO INFORMATION DISCLOSING WHEREABOUTS OF SUBJECT.
THIS CONFIDENTIAL SOURCE WAS ^{IS}~~THEN~~ ASSIGNED SYMBOL NUMBER [REDACTED]

1-S-2 DESK

JHW/mjk
(2)

INDEXED
FILED

Greenberg/Gray-2432

Approved: *[Signature]*

Special Agent in Charge

Sent

M

Per

100-17

UNITED STATES GOVERNMENT
M E M O R A N D U M

TO: SAC, NEWARK

b2
b7D

DATE: 1/12/73

FROM: SA

b6
b7C

SUBJECT:

b2
b7D

☒ as true case
☐ PCI
☐ PSI
☐ RI-Prob.

This form is being utilized to facilitate the preparation of an index card for the Criminal Informant Index, Security Informant Index, or Racial Informant Index on captioned PCI, PSI, or RI-Prob., as may be appropriate. The spaces should be filled in detail and this form returned to me as soon as all items are completed. When this form is serialized into the file, you may use the serial number of this form to fill in appropriate items in Form FD-237, FD-238, or FD-377.

PLEASE PRINT OR TYPE:

FULL NAME: _____

Residence Address: _____

Residence Phone: _____

b6
b7C
b7D

Place Where Contacted: _____

Alternate Contacting Agent: _____

Area of Coverage (by County): _____

Type of Coverage (by Classification): _____

b2
b7D

2

SERIALIZED	INDEXED
FILED	
JAN 15 1973	
FBI - NEWARK	

Handwritten signature: *Gray*

b6
b7C

UNITED STATES GOVERNMENT

Memorandum

TO : SAC NEWARK ([redacted]) P b2
b7D

DATE: 1/30/73

FROM : SA [redacted] b6
b7C

SUBJECT: [redacted]
Union, New Jersey

b2
b6
b7C
b7D

Due to case agents interoffice squad transfer, it is recommended this case be reassigned.

Greenberg/Gray-2434

reassign

JEN/

[redacted] - 3

b2
b7D

SEARCHED	INDEXED
SERIALIZED	FILED
JAN 31 1973	
FBI - NEWARK	

[redacted]

b6
b7C

UNITED STATES GOVERNMENT

Memorandum

TO : SAC, NEWARK [REDACTED] (P) b2 b7D

DATE: 2/28/73

FROM : SA [REDACTED] b6 b7C

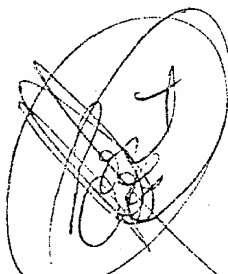
SUBJECT: [REDACTED] b2 b6 b7C b7D
Union, N.J.

On 2/28/73 [REDACTED] advised that no additional information has been developed since [REDACTED] attempted to contact [REDACTED] parents' previous address earlier this month.

b2
b6
b7C
b7D

Greenberg/Gray-2435

KFS/kfs
(1)



[REDACTED] b2 b7D

SEARCHED	INDEXED
SERIALIZED	FILED
FEB 28 1973	
FBI - NEWARK	

UNITED STATES GOVERNMENT

Memorandum

TO : SAC [REDACTED]

b2
b7D

DATE: 4/30/73

FROM : SA [REDACTED]

b6
b7C

SUBJECT: [REDACTED]

b2
b7D

Dates of Contact

4/26/73

File #s on which contacted (Use Titles if File #s not available or when CI provides positive information)

88-8767

Purpose and results of contact

- ☐ NEGATIVE
☒ POSITIVE
☐ STATISTIC

*All information has been appropriately
disseminated.*

☐ POSITIVE ASSIGNMENT GIVEN (Ghetto only)

Has informant shown any indication of emotional instability, unreliability or furnishing false information?

☐ Informant certified that he has furnished all information obtained by him since last contact, including information concerning narcotics.

Coverage

PERSONAL DATA

[REDACTED]

SEARCHED	INDEXED
SERIALIZED	FILED
APR 30 1973	
FBI - NEW YORK	

b2
b7D

Gout Ex

4/27/73

AIRTEL

Greenberg/Gray-2437

TO: ACTING DIRECTOR, FBI (88-55609)

FROM: SAC, NEWARK (88-8767) (P)

SUBJECT: [REDACTED]

b6
b7C

FUGITIVE
(WENTWORTH)
UNAP - FORCIBLY
OO: MILWAUKEE

Re letters from Acting Director, FBI to Assistant
Postmaster General Inspection Service, U.S. Postal Service,
Washington, D.C. 11/16/72 and 2/12/73.

Newark letter to Bureau, dated 1/30/73.

Investigation is currently attempting to determine
if [REDACTED]
might not be [REDACTED] of same apartment building.
There is no record of an [REDACTED] ever having lived at Apt.
[REDACTED]

b6
b7C

The only information obtained through the mail cover
since referenced communications, occurred when on 2/2/73, it
was reported that [REDACTED] had received a letter
addressed to [REDACTED] Newark, NJ.
The letter had been forwarded to postal authorities to the
[REDACTED] Union, NJ.

b6
b7C

It was determined that this letter was from [REDACTED]
[REDACTED] and was
postmarked 1/30/73. The envelope also bore a card which
the sender described as [REDACTED] and
[REDACTED]

b6
b7C

2- Bureau
1- Newark (88-8767)
KPS:mc
(7)

b2
b7D

NK 88-8767

time together, or rather not together". No dates or specific times were mentioned.

Milwaukee subsequently identified [] as a female former college associate of subject and made a pretext phone call to the [] residence, posing as []. Nothing further has developed.

b6
b7C

Periodic contact with Postal Inspector, [] [] Newark, NJ, has determined that no other correspondence besides various household bills is received by the [].

b6
b7C

In spite of the negligible amount of mail received by the [] and the lapse of time since it was initially reported that subject was considering surrendering to Federal authorities, it is felt that there is sufficient justification to continue the mail cover. Other former associates such as [] may try to contact [] through her parents and thereby provide leads as to past habits or modes of travel and living. The subject may also yet be planning to turn herself in and some indication may be obtained through this source.

b6
b7C

Newark requests an additional 90 day extension.

UNITED STATES GOVERNMENT

Memorandum

TO : SAC, [REDACTED] b2 b7D

FROM : SA [REDACTED] b6 b7C

SUBJECT: [REDACTED] b2 b7D

DATE: 6/29/73

No additional information has been obtained since source obtained photographs of a card sent from [REDACTED]

[REDACTED] to [REDACTED] address, b6 b7C

[REDACTED] This information is contained in serial 88-8767-144, an airtel from Newark to the Acting Director, dated 5/25/73.

Greenberg/Gray-2439

Post List

KFS/kfs
(1)

[REDACTED]		-6
SEARCHED	INDEXED	b2 b7D
SERIALIZED	FILED	
JUN 29 1973		
[REDACTED]		b6 b7C

UNITED STATES GOVERNMENT

Memorandum

TO : SAC, NEWARK [REDACTED] (C) b2 b7D

DATE: 8/31/73

FROM : SA [REDACTED] b6 b7C

SUBJECT: [REDACTED] b2 b7D

Due to a lack of activity in this matter and no prospect of an increase thereof in the immediate future, this case is being placed in a closed status.

Greenberg/Gray-2440

Handwritten signature and scribbles

[REDACTED]	
SEARCHED	INDEXED
SERIALIZED	FILED
973	
ARK	
1/8	

b2
b7D

b6
b7C

FILED 9/14/73



kfs
(1)

7-12-78

b6
b7C

U. S. vs. L. PATRICK GRAY III, ET AL
DISCOVERY PROCEEDINGS

PURPOSE: To record alteration and clarification of previous written instructions from the Department on the scope of discovery.

SYNOPSIS: Inventory of August 19, 1976, search and seizure to be processed, but decision re 191 folders retrieved October 22, 1976, and June 1978 held in abeyance pending discussion with defense. Serials indicating known Weatherman Bag Jobs not charged in the indictment to be isolated and processed. A summary comparable to what would be prepared in response to inquiry from a Congressional Committee proposed by Department to answer questions on incentive awards for Bag Jobs, and all Bag Jobs since 1960. Proposal will be considered; to be decided after additional discussion. Department desires to be alerted promptly if criminal discovery in this prosecution impedes civil discovery in Price vs. Kearney. No conflict now foreseen.

RECOMMENDATION: None. For information and record purposes.

DETAILS: On July 7, 1978, Special Agent [redacted] met with Francis J. Martin and discussed, in greater detail, discovery questions previously discussed by Martin by telephone with Special Agent [redacted]. This memorandum covers decisions reached during both contacts.

1. The inventory materials furnished in the letter ¹⁴ AUG 31 1978 from Mr. McDermott to Mr. Skolnik dated July 7, 1978, and captioned as above, will be processed including the cover letter, enclosures one through six (except the Departmental memorandum), and the 22 reviews forwarded by Mr. Long to Mr. Gardner in 1976. Enclosure 7 is not to be processed at all.

Greenberg/Gray-2441

(CONTINUED - OVER)

8 4 SEP 14 1978

[redacted] to Mr. Bassett Memo
Re: U. S. vs. L. Patrick Gray III, et al
Discovery Proceedings.

b6
b7C

Enclosure 3, a 50-page handwritten list of folders by their present location, will be processed as it stands. Martin had been interested in having us prepare a separate list of all folders listed in enclosure 3, but not listed in enclosure 2 (the original inventory). This was abandoned when it was determined a reinventory or approximately one week's work would result.

2. Martin initially desired all 191 folders retrieved in October 1976 processed. He was advised we would like a final decision rather than a tentative decision, since seven full cabinets of material are involved and the processing could take as much as one month's time. He agreed and will consult with Mr. Skolnik and defense counsel before reaching a final decision. We will process no seized material until further notice.

3. Martin would like us to locate and process only those serials which indicate a Bag Job was used and a summary memorandum explaining what the investigation was about in the CAPBOM, PENBOM, ITT, [redacted] and [redacted] files. When it was pointed out to him these instructions are consistent with our original instructions for the four individual subjects but that the three bombing investigations were already processed and his request meant additional work, he conceded that the processing of the three bombing investigations may have been unnecessary but that he believed defendant Miller will want to review them. He was advised some of this processing cannot be done until after the July 15, 1978, deadline.

4. Martin states that, although he has made no specific commitment to the defense, he would like us to prepare a report or a briefing statement with sample documents attached, such as the FBI might prepare if answering a question posed by a Congressional Committee. He was advised we would look into the matter and recontact him with regard to the following two topics in which he is interested. He indicated the prosecution is moving toward forcing on the defense a stipulation on these two questions.

A. Bureau policy on incentive awards for Bag Jobs and statistics on how many awards were given.

B. All Bag Jobs since 1960.

Greenberg/Gray-2442

[redacted] to Mr. Bassett Memo
Re: U. S. vs. L. Patrick Gray III, et al
Discovery Proceedings

b6
b7C

Martin notes that the Department objects to furnishing this information to Felt and Miller on the issue of whether or not Bag Jobs are legal, but would consent to producing it to all three defendants pursuant to the request of Gray who seeks support for his position that Bag Jobs could occur without the Director knowing about them.

Martin wants only a reasonable effort to compile the report or briefing statements on the above two topics. He is flexible on the content and on whether or not they can be done at all, since he has made no commitments.

5. Martin states he had recently discussed the civil litigation captioned Price vs. Kearney with an AUSA in New York. Discovery proceedings had been stayed in the civil case during the prosecution. Martin advised the AUSA the civil discovery did not need to be stayed any longer. He wanted to be sure the criminal discovery did not conflict with civil discovery, since the Nickerman, Cole, and Blackburn files are needed. He wanted to be advised immediately if any conflict appeared possible. I have discussed Martin's concern with Special Agent [redacted] who has the civil litigation assigned to him in the Legal Counsel Division. Although the civil discovery has not been resolved or completed, no conflicts now exist.

No action
necessary.
note
[redacted]

b6
b7C

Greenberg/Gray-2443

FEDERAL GOVERNMENT

Barnet D. Skolnik
Special Counsel to the
Assistant Attorney General
Criminal Division
John J. McDermott
Deputy Associate Director
Federal Bureau of Investigation
U. S. vs. L. PATRICK GRAY III, ET AL
DEFENSE DISCOVERY

7-7-78

In compliance with instructions in a May 25, 1978, letter from Francis J. Martin, of your office, to Special Agent [redacted] (Part II, paragraph 1), we have conducted a current inventory of all extant materials which were the subject of seizures on August 19, 1976, under the direction of former Assistant Attorney General J. Stanley Pottinger and Mr. William L. Gardner of the Civil Rights Division.

b6
b7C

Enclosed are the following:

1. A copy of a one-page listing of the 22 cabinets seized, showing the person from whose possession it was seized or whose materials it contained, the date on which a summary and the inventory of its folders was furnished to your office, and the date the cabinet or its contents was returned to the original holder.

2. A copy of the original August 1976 inventory of folder and divider captions with annotations reflecting information compiled during our June 1978 inventory:

a. "Desired 1976" - Those folders specifically designated by the Civil Rights Division in October 1976 for retrieval after they were seized and returned. There were 232 folders then specified.

b. "Obtained 1976" - The 185 folders, of which 232 specified, which were located and retrieved on or about October 22, 1976.

c. "Available 1978" - All folders which are now available, whether or not they were specified for retrieval

ENCLOSURE "ENCLOSURE IN BULKY ROOM"

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgmt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

1 - Mr. McDermott
1 - Mr. Colwell
1 - Mr. Long
1 - Mr. Bassett

b6
b7C

APPROVED:

Director _____
Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____

Adm. Serv. _____
Crim. Inv. _____

Ident. _____
Intell. _____
Laboratory _____

Legal Coun. _____
Plan. & Insp. _____

Rec. Mgmt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____

CONFIDENTIAL MATERIAL
ENCLOSED

b6
b7C

FBI/DOJ

79 OCT 17 1978

Barret D. Skolnik
Special Counsel to the
Assistant Attorney General
Criminal Division

in October 1976. They include six folders identified during the June 1978 inventory, which brings the total located to 191 folders out of 232 sought.

d. "Amount" - The number of documents in each folder as counted during the June 1978 inventory. The count was taken in an attempt to freeze the content of the folders. No detailed listing was made, since there is nothing to compare it with from August or October 1976. Items counted ranged from slips of paper with notes on them, to printed material, to large reports and rough draft documents.

3. New inventory listing by present location prepared in support of Item 2, above, in June 1978.

4. A copy of the FD-302 of Mr. Shackelford on June 22, 1976, reflecting the return of those folders and materials he had retained. We have retained a copy of his loose-leaf notebook, returning the original to him, per the instructions of Mr. Martin.

5. Copies of the following materials, prepared at the time of the seizure, return, and retrieval in 1976.

a. List of cabinets showing room number from which seized, number of folders specified for retrieval in October 1976, and the number of folders retrieved at that time.

b. Form for each cabinet showing labels on drawers, date and room from which seized, date of review and identity of reviewer, date and room to which returned, and date review was sent to your office.

6. Copies of a letter dated May 28, 1976, to former Director Kelley from former Assistant Attorney General Bottinger and a teletype to all domestic and foreign FBI offices from the Director dated June 1, 1976, captioned "Surreptitious Entry Investigation" and "Surreptitious Entry," respectively.

Greenberg/Gray-2445

Barnet S. Skolnik
Special Counsel to the
Assistant Attorney General
Criminal Division

7. Copies of "...regulations that relate to the routine destruction of such materials:"

a. Cover page, index page, and relevant textual pages concerning retention of ticklers from the "Manual for Bureau Supervisors." This manual was in effect in 1976.

b. Copies of memoranda dated February 27, 1976; April 12, 1976; March 30, 1977; and March 31, 1977, outlining a trial period of one year, during which retention/destruction of ticklers was optional. The trial period was in effect during the pertinent time frame of August through October 1976. The 60-day destruction policy had been in effect for a considerable period of time as indicated by the March 10, 1953, memorandum.

The following materials, previously furnished, should be reviewed to evaluate the seizure and the statements which can be made with certainty regarding the relevance and the extent of loss of these materials:

1. The report of interview on October 22, 1976, of Robert L. Shackelford which was forwarded by letter from J. P. Schultz to Mr. William L. Gardner on October 26, 1976.

2. Individual reviews of the contents of the 23 cabinets to which were attached the folder inventory of the cabinet and copies of documents considered at that time to be of possible prosecutive interest. See enclosure number 1 for a list of the dates of the 23 letters by which these documents were forwarded to you between August 23, 1976, and September 3, 1976.

Greenberg/Gray-2446

Barnet S. Shulnik
Special Counsel to the
Assistant Attorney General
Criminal Division

Chronology of Events

August 19, 1976

Search and Seizure.

August 25, 1976 through
September 3, 1976

Reviews forwarded to Department
with inventories and copies of
some documents.

August 27, 1976 through
September 3, 1976

Cabinets returned to offices.

October 22, 1976

Attempted retrieval of 332
folders, 181 retrieved.

October 26, 1976

Written notice of acknowledged
destruction forwarded to Depart-
ment.

25, 1976

Inventory of all available
seized material ordered.

June 28, 1976

Inventory completed, documents
in each folder counted; six
additional folders of 232 sought
on October 22, 1976, newly
located.

The August 19, 1976, search and seizure was under
the direction of Messrs. Pottinger and Gardner of the
Department. Mr. Richard B. Long served as Investigation
Coordinator of the FBI's Special Agents assigned to work
for the Department.

The return of the seized material between August 27,
1976, and September 3, 1976, was at the direction of Mr. Gardner.
When the return was ordered, Mr. Gardner was advised by FBI
personnel assigned that, once returned, the materials might
not be retrievable, and would never again be accountable. He
indicated at that time the Department had all the material it
wanted.

The copies of documents forwarded with the reviews
and inventories between August 25, 1976, and September 3, 1976,
are the only documents we can state with confidence are exactly

Greenberg/Gray-2447

Barnet S. Skolnik
Special Counsel to the
Assistant Attorney General
Criminal Division

as they were when seized. (The documents had been selected as being of possible prosecutive interest.) The documents retrieved on October 22, 1976, had been accessible for almost two months. The balance of the documents not retrieved have been accessible for more than 22 months.

Destruction was acknowledged on October 22, 1976. Additional loss and destruction has occurred since then, which we have not attempted to trace. Folders have been completely destroyed, culled for nonessential material, and rearranged--all in the normal course of business. It is impossible to determine the quantity of materials lost.

As pointed out in the "Note" to the June 1, 1976, teletype (enclosure 6), Mr. Gardner exempted "ticklers for information only at FBI Headquarters..." from the destruction moratorium.

The folders seized were predominately "tickler folders," although there were some files, manuals, and nondocumentary materials in the cabinets. The "tickler folders" contained not only "tickler copies" (informative copies of memoranda and correspondence, the originals of which are on record), they also contain "Do Not File" memoranda, rough drafts, and hand-written notes (including notes on "tickler copies") and hand-written routing slips, scraps of paper, etc.

The inventory of materials, currently on hand, (enclosure 3) contains folders we suspect were part of the original seizure, but are unable to so conclude with certainty. If seized, they are likely to have been included in such places as cabinet 22, the inventory of which is nonspecific, (see enclosure 2).

Per instructions of Mr. Martin, we are commencing processing for disclosure only the reviews and documents forwarded to you between August 23, 1976, and September 3, 1976. We have noted the inventories include some material classified "CONFIDENTIAL" and the documents forwarded include

Greenberg/Gray-2448

Barnet D. Skolnik
Special Counsel to the
Assistant Attorney General
Criminal Division

some classified "TOP SECRET" - CODEWORD. Since we have corresponded on this problem before, I assume you are regarding as sensitive and possibly classified all material accumulated by your office over the past two years.

Enclosures - 1

PVD/ST

Greenberg/Gray-2449

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

TO : Mr. Bassett

DATE: 7-13-78

FROM :  b6
b7CSUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL
FBI DOCUMENTS HELD BY THE DEPARTMENT



Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

PURPOSE: To record informal action taken to resolve discrepancy between the Director's letter to the Attorney General dated May 9, 1978, and the response of the Deputy Attorney General to the Director on May 31, 1978.

DETAILS: By letter dated May 9, 1978, the Director expressed concern over the large volume of material in the possession of the Department which has not received a classification review. The return of materials not essential to the current prosecution was specifically requested.

The May 31, 1978, response by the Deputy Attorney General to our inquiry outlined safeguards instituted to preclude any further release of FBI materials to defense attorneys without prior review by FBI personnel. The Director's May 9, 1978, letter, however, did not raise this issue. We were satisfied with the new procedures for reviewing FBI materials prior to release to the defense. The Director's letter did address the continued maintenance of sensitive FBI materials by the Department which, though classifiable, contained no markings to indicate such classification.

The response includes one incorrect statement and one statement which is misleading. Documents compiled by the "Long Task Force" which are not of potential use to the prosecution team are not stored exclusively in FBI space. Two copies exist of this collection of documents. One copy is in Room 1427D of this building and is Mr. Long's record of documents furnished by him in letters to the Department. The second copy exists in the office space of the Department's Task Force. They are no longer arranged in the order sent, the packages have been disassembled and placed in folders to suit the purposes of the Departmental attorneys.

- 1 - Mr. McDermott
- 1 - Mr. Bassett
- 1 - 
- 1 - 

b6
b7C

REC-110

(CONTINUED - OVER)

b6
b7C

14 AUG 31 1978

ENCLOSURE

JLT:dmd

(5)



[redacted] to Mr. Bassett Memo
Re: U. S. vs. L. Patrick Gray III, et al
FBI Documents Held by the Department

b6
b7C

Based upon our limited knowledge of the Department's arrangement of these documents, it is doubtful that FBI personnel could retrieve these copies, reassembling them into their original packages to insure accountability, without a considerable amount of assistance from Departmental attorneys familiar with their system. Indeed, we should consider it the responsibility of the Department to reassemble the copies. It is unlikely the Department would be willing to participate in such an effort until after the trial, unless there is some substantial delay before trial commences.

The statement that documents held by the Department are being reviewed by FBI personnel is technically misleading since we have actually reviewed only the 17 documents inadvertently released. Such review is, however, now being substantially accomplished since the Department is releasing only materials in packages processed by the FBI.

In compliance with Mr. Adams' suggestion to resolve the discrepancy informally with the Department, with which the Director concurred, I contacted Mary C. Lawton, Deputy Assistant Attorney General, Office of Legal Counsel on June 22, 1978.

Ms. Lawton advised she had drafted the letter for the Deputy Attorney General. The situation, as outlined above, was discussed with her and she stated she was unaware that the 81 volumes worth of material remained in Mr. Skolnik's office. She understood the material had been returned to the FBI.

I advised Ms. Lawton our principal concern was that there be no misunderstanding on the part of the Department that unmarked copies of FBI documents remain in Mr. Skolnik's office in large volume. Ms. Lawton stated she would contact Francis J. Martin of Mr. Skolnik's office and would insure the existence of these documents was not overlooked, nor the need for their ultimate return forgotten. I advised Ms. Lawton we could understand the Department's inability to comply immediately with our request for their return, but that we would have grave concern as long as they remained in Mr. Skolnik's office in an unmarked fashion.

Greenberg/Gray-2451

[] to Mr. Bassett Memo
 Re: U. S. vs. L. Patrick Gray III, et al
 FBI Documents Held by the Department

Still unresolved is the related issue of classifiable information in the transcripts of the several Grand Juries which heard testimony during the investigation. The transcripts undoubtedly contain unmarked classified information. During the June 1, 1978, meeting with Mr. Skolnik, his staff, and Deputy Assistant Attorneys General Lawton and Keuch, which you and Mr. McDermott attended, the Grand Jury transcript problem was discussed. Mr. Skolnik agreed to notify defense attorneys of the problem of classified materials in the transcript and to seek a court order allowing review of the transcript by FBI, CIA, and NSA personnel for the purpose of identifying highly sensitive information and alerting holders of the transcript to its sensitivity.

We have received no word on the resolution of the transcript problem, but will pursue the matter.

RECOMMENDATIONS: 1. We should accept the written reassurance of the Deputy Attorney General, as drafted by Ms. Lawton, that he is satisfied adequate measures have been taken to protect these materials, now that the complete facts are in Ms. Lawton's hands. Return of the materials will be sought at the earliest opportunity and not later than the conclusion of the trial.

APPROVED: _____

Director	Adm. Serv. _____	Legal Coun. _____
Assoc. Dir. _____	Crim. Inv. _____	Plan. & Insp. _____
Dep. AD Adm. _____	Ident. _____	Rec Mgnt. <u>h</u>
Dep. AD Inv. _____	Intell. _____	Tech. Servs. _____
	Laboratory _____	Training _____
		Public Affs. Off. _____

2. We should raise the issue of classifiable information in the Grand Jury transcripts after the July 12, 1978, oral argument of pretrial motions to determine if Mr. Skolnik's office has taken any steps to resolve the issue.

APPROVED: _____

Director	Adm. Serv. _____	Legal Coun. _____
Assoc. Dir. _____	Crim. Inv. _____	Plan. & Insp. _____
Dep. AD Adm. _____	Ident. _____	Rec Mgnt. <u>h</u>
Dep. AD Inv. _____	Intell. _____	Tech. Servs. _____
	Laboratory _____	Training _____
		Public Affs. Off. _____

*Re: 7/13/78 Francis v. Martini
 advised transcript review
 not yet solved, but could order
 is not necessary. He is pursuing.*

Greenberg/Gray-2452

DO-7

FROM

OFFICE OF DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
TO
OFFICIAL INDICATED BELOW

MR. ADAMS _____
MR. MCDERMOTT _____
MR. BASSETT _____
MR. COCHRAN _____
MR. COLWELL _____
MR. CREGAR _____
MR. JOSEPH _____
MR. KELLEHER _____
MR. KENT _____
MR. LONG _____
MR. MINTZ _____
MR. MOORE _____
MR. BOYNTON _____
MR. BRUEMMER _____
MR. HOTIS _____
TELE. ROOM _____
MISS DEVINE _____

SEE ME _____
NOTE AND RETURN _____
PREPARE REPLY _____
SEND MEMO TO ATTORNEY GENERAL _____
FOR YOUR RECOMMENDATION _____
WHAT ARE THE FACTS? _____
HOLD _____

REMARKS: _____

FBI/DOJ

Greenberg/Gray-2453

62-118045-50

ENCLOSURE

Federal Bureau of Investigation
Office of Associate Director

6/15, 1978

<input checked="" type="checkbox"/> Director	<input type="checkbox"/> Mr. Bruemmer
<input type="checkbox"/> Associate Director	<input type="checkbox"/> Miss Devine
<input type="checkbox"/> Asst. to the Dir. - Adm	<input type="checkbox"/> Telephone Room
<input type="checkbox"/> Asst. to the Dir. - Inv	
<input type="checkbox"/> Ident. Div.	<input type="checkbox"/> Reading Room
<input type="checkbox"/> Training Div.	<input type="checkbox"/> Mail Room
<input type="checkbox"/> Adm. Serv. Div.	<input type="checkbox"/> Teletype
<input type="checkbox"/> Records Mgt. Div.	<input type="checkbox"/> Pr. & Sp. Mgt.
<input type="checkbox"/> Intell. Div.	
<input type="checkbox"/> Criminal Inves. Div.	<input type="checkbox"/> For Approp.
<input type="checkbox"/> Laboratory Div.	<input type="checkbox"/> Action
<input type="checkbox"/> Tech. Serv. Div.	<input type="checkbox"/> Initial & Return
<input type="checkbox"/> Legal Counsel Div.	<input type="checkbox"/> Please Call Me
<input type="checkbox"/> Plan. & Insp. Div.	<input type="checkbox"/> For Information
	<input type="checkbox"/> Per Conversation
<input type="checkbox"/> Public Affairs Office	<input type="checkbox"/> Please See Me
<input type="checkbox"/> Mr. Mack	
<input type="checkbox"/> Mr. Feeney	<input type="checkbox"/> Mr. Dinan
	<input type="checkbox"/> Mr. Sonnichsen
<input type="checkbox"/> Mrs. Mutter	
<input type="checkbox"/> Mrs. Haines	
<input type="checkbox"/> Miss A. Southers	

M

Rm.

Remarks

*we can handle this
informally with
the Dept.*

Jma

J. B. Adams
Room 7142, Ext. 3515

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**Memorandum**TO : Mr. Bassett *ANB/R*

DATE: 7/13/78

FROM : D. Ryan *DR*1 - Mr. H. N. Bassett
1 -
1 - Mr. J. W. Gerblick
1 - Mr. D. Ryan

Assoc. Dir.	_____
Dep. AD Adm.	_____
Dep. AD Inv.	_____
Asst. Dir.:	_____
Adm. Servs.	_____
Crim. Inv.	_____
Ident.	_____
Intell.	_____
Laboratory	_____
Legal Coun.	_____
Plan. & Insp.	_____
Rec. Mgnt.	_____
Tech. Servs.	_____
Training	_____
Public Affs. Off.	b6
Telephone Rm.	b7C
Director's Sec'y	_____

SUBJECT: UNITED STATES V. L. PATRICK GRAY,
ET AL.

PURPOSE: To set forth current information relating to clearances granted by the Department of Justice to attorneys and researchers representing L. Patrick Gray, W. Mark Felt and Edward S. Miller, defendants in captioned matter.

DETAILS: On 7/10/78, of the Personnel Security Unit, U. S. Department of Justice, advised me the following attorneys have been afforded clearance for access for up to "Top Secret" by the Department of Justice: Steven H. Sachs, representing Gray; George Leibmann, representing Gray; Brian P. Gettings, representing Felt; Thomas A. Kennelly, representing Miller; Howard S. Epstein, representing Miller; Mark D. Cummings, representing ?; William L. Stauffer, representing Felt.

advised Alan I. Baron had technically not been afforded "Top Secret" as of this time, although he would be afforded this clearance imminently.

Additionally, attorneys FNU Cohen and FNU Levin are under consideration for clearance, but as of this time the Department had not received the paper containing the official request, so processing has not been initiated.

Defendants Gray, Felt and Miller have also been cleared by the Department for access to "Top Secret." **14 AUG 31 1978**

advised additionally the 14 researchers (former Special Agents) had all been afforded clearance for up to "Top Secret" by the Department.

of the Personnel Security Unit advised 7/10/78 that Sachs, Leibmann, Baron, Gettings, Kennelly, Epstein, Cummings and Stauffer all would be afforded clearance for access to "SI" in the compartmented area, but to date this

CONTINUED - OVER

DR:lfj 15
(5)

8 SEP 14 1978

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

Memorandum to Mr. Bassett
Re: United States v. L. Patrick Gray,
et al.

clearance had not been effected because they had not been provided the required briefing. Also, Gray, Felt and Miller would be furnished clearance for access to "SI" and it would be necessary for them to resign the required loyalty oath for this access. [] added that to date he has not received a request for compartmented clearance for any of the 14 former Agent researchers, but he anticipated this would be requested for some of the 14 in the near future.

RECOMMENDATION: For referral to the Special Task Force processing material in connection with discovery in this matter.

WLB

APPROVED: _____	Adm. Serv. _____	Legal Coun. _____
Director _____	Crim. Inv. _____	Plan. & Insp. _____
Assoc. Dir. _____	Ident. _____	Rec. Mgnt. <i>HND</i>
Dep. AD Adm. <i>[initials]</i>	Intell. _____	Tech. Servs. _____
Dep. AD Inv. <i>[initials]</i>	Laboratory _____	Training _____
		Public Affs. Off. _____

TO : [REDACTED] b6
b7C

FROM : [REDACTED]

SUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL

DATE: 7-14-78

On July 13, 1978, Francis J. Martin, Department of Justice, advised during a meeting, held for an unrelated purpose, that defendant Edward S. Miller had placed 12 documents on record with the court during the argument of pre-trial motions on Wednesday, July 12, 1978. The documents were marked in evidence as "DM-1" through "DM-12."

DM-11 contains excerpts from [REDACTED] testimony before the Grand Jury. DM-12 contains excerpts from the [REDACTED] testimony.

The first ten documents are taken from the package of 31 documents delivered to the Department for disclosure to the defense on May 16, 1978, relating to the "Ruckelshaus" questions. Our record copy of this disclosure has been annotated with the ten documents which are as follows:

DM-1: 1
July 20, 1973, letter from William D. Ruckelshaus to the Director, "Substantive Issues Regarding the Future of the FBI." (U)

DM-2: 3
Memorandum dated July 30, 1973, from Director Kelley to Messrs. Callahan et al, "Re: Meeting With Attorney General July 30, 1973." (U)

DM-3: 30
Informal memorandum dated August 2, 1973, from Edward S. Miller to Branch and Section Chiefs, "Re: Investigations of Irregularities..." (U)

DM-4: 4
Memorandum dated August 14, 1973, R. J. Baker to Mr. Callahan, "Re: Issues Raised by Mr. William D. Ruckelshaus..." (U)

DM-5: 31
Unsigned, undated letter answer "For the Director's information only" to the question "Seven. Does the FBI ever employ the technique of surreptitious entry?" (Top Secret-Code Word)

(CONTINUED - OVER)

8 4 SEP 14 1978

[redacted] Memo

Re: U. S. vs. L. Patrick Gray III, et al

DM-6: 15

Letter dated December 15, 1973, from Robert H. Bork, Acting Attorney General to the Director, "Study of FBI Programs and Policies." (U)

DM-7: 19

Memorandum dated May 2, 1974, from Director Kelley for Messrs. Callahan, Jenkins, Miller, Adams, and Mintz. "Re: Deputy Attorney General Laurence H. Silberman; Associate Deputy Attorney General James Wilderotter." (U)

DM-8: 20

Informal note dated May 21, 1974, with addendum dated May 24, 1974, both by J. B. Adams, "Re: Substantive Issues Regarding Future of FBI Raised by Ruckelshaus." (U)

DM-9: 21

Memorandum dated July 5, 1974, from O. T. Jacobson to Mr. Callahan, "Substantive Issues Regarding the Future of the FBI..." [pages 1, 2, 9, and 10 only from 20-page memorandum] (U)

DM-10: 24

Handwritten note dated May 30, _____, beginning, "Miller talked with Kelley and later to Wilderotter..." It is one piece from a package of four notes and routing slips. (U)

DM-5 is ^{marked} ~~regarded~~ Top Secret-Code Word. With the excisions; however, the document would be classified Secret. The document was furnished in excised form to the Department. The Department was advised in writing, at the time, the classification level with excisions was at the Secret level, although the stamp was not changed.

The above information is being recorded for our assistance in retrieving these documents following the conclusion of the case. Mr. Skolnik requested the documents be sealed and characterized them as sensitive during the hearing. Mr. Martin will contact the Judge's clerk to request that limited access be granted and that appropriate storage facilities be used.

Greenberg/Gray-2458

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

DATE: 7-19-78



b6
b7C

TO : Mr. Bassett HNTJ-

FROM : b6
b7C

SUBJECT: RESPONSE TO DEFENSE REQUEST FOR
DISCOVERY IN U. S. vs. L. PATRICK GRAY III, ET AL

PURPOSE: To report the release of one employee to his former unit.

DETAILS: As of July 17, 1978, Special Agent returned to his former unit.

b6
b7C

RECOMMENDATION: None, for information.

APPROVED:

Director _____
Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____

Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____

Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. HND
Tech. Servs. _____
Training _____
Public Affs. Off. _____

62-118045

EX-130

REC-47 62-118045-52X
62-117958-30

Greenberg/Gray-2459

6 SEP 6 1978

- 1 - Finance and Personnel
- 1 - Mr. Bassett
- 1 - Mr. Cochran

JLT:dmd (5)

THREE

PERS. REC. UNIT

FBI/DOJ



62 OCT 4 1978 Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

4
10
Director
Visa Office
Department of State
Attention: Chief, Coordination Division
[redacted] Federal Bureau of Investigation
Defense Discovery Special
Room 6888, JEM
U. S. vs. L. PATRICK GRAY III, ET AL
DEFENSE DISCOVERY/CLASSIFIED MATERIAL

7-25-78

~~FEDERAL GOVERNMENT~~

BY LIAISON

b6
b7C

4-1
WCR
Enclosed is a package of copies of documents from FBI records together with a standard form cover sheet listing each document and explaining, in general terms, the necessity for referring these documents to your agency for your review.

This office is now engaged in reviewing FBI records to be provided to defense attorneys during discovery and possibly for later use by either the prosecution or the defense at trial. The prosecution involved is that announced on April 10, 1978, in which the former Acting Director and two other retired FBI officials have been charged with violating civil rights by surreptitious entries.

We must be able to determine from your reply the following: 1. Whether or not the document is properly classified under the current standards of Executive Order 11652. 2. What portions, if any, your agency feels should not be given to defense counsel during discovery for any of the following three reasons: a. Disclosure would compromise an ongoing investigation. b. Disclosure would compromise an informant or source. c. Disclosure would constitute undue embarrassment or damage to an unrelated third party. 3. What portions of the document, although accessible during discovery, should not be used in open court, eg., classified material not falling into any category under paragraph two, above, which may be exhibited to defense attorneys possessing proper clearances but which should not be used in open court. Marking material which remains classified denoting the classification level down to at least the paragraph level will normally suffice.

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

You may make and retain or return all copies of this correspondence, the referral form, and the documents at your option.

1 - Mr. Ryan
1 - Mr. Nicholas

(SEE NOTE PAGE 42) AUG 31 1978

b6
b7C

Greenberg/Gray-2460

FBI/DOJ

8 4 SEP 14 1978

3-ENCLOSURE

Director
Visa Office
Department of State
Attention: Chief, Coordination Division

Documents furnished may include both documents originated by your agency, FBI documents quoting information from your agency, and FBI documents concerning an area in which your agency has the primary or overriding interest. Complete documents will normally be furnished in order that you might see the material of interest to you in context. Partial documents will often be furnished when a significant portion of the material does not relate to your agency and is not necessary to understand the material and its context.

We will continue to encounter material of interest to your agency. This letter has been prepared in order to alert you more specifically to the anticipated continuing need for such referrals and to explain the object of the referral. In the future, we plan to make any necessary additional referrals by the use of the attached cover sheet only, if you have no objections.

The Department of Justice has requested us to seek the most expeditious handling of this material which may be possible under the circumstances. Any consideration you may be able to give their request will be appreciated.

Enclosure

ma

NOTE: Future requests will be handled through liaison with cover sheet only, except when TOP SECRET or compartmentalized material is involved. When necessary, receipts will accompany the cover sheet. Each cover sheet identifies those documents being referred by serial and gives a more concise set of instructions regarding the review needed.

Greenberg/Gray-2461

Barnet D. Skolnik
Special Counsel to the
Assistant Attorney General
Criminal Division

7-25-78

*h
90*
[Redacted]
Federal Bureau of Investigation
Room 6888, JEH

b6
b7C

U. S. vs. L. PATRICK GRAY III, ET AL FEDERAL GOVERNMENT

me
Reference is made to a letter to you dated July 7, 1978, and captioned as above from John J. McDermott, Deputy Associate Director of the FBI.

An incorrect figure was inadvertently included in the "Chronology of Events" on page 4 of referenced letter. The listing of dates in that section of the letter for October 22, 1976, indicates "Attempted retrieval of 232 folders, 191 retrieved." Please correct the figure "191" by replacing it with the correct figure of 185. The figure of 191 would apply to the total folders available after six additional folders were found during the inventory completed on June 28, 1978.

Enclosures 2 and 3 contain information which is classified "CONFIDENTIAL" overall. Enclosure 2, the annotated copy of the original 1976 inventory, has a folder listed which should be noted as classified "CONFIDENTIAL" by placing the usual notation (C) after the entry. The entry is contained on the first page of the inventory for drawer number 2, cabinet number 13. The entry is the third line from the end of the first page, immediately following "Weathfug-Mail Service Agencies" and immediately preceding the entry "Weathfug-Medical Support."

The same listing is contained on page 9 of enclosure 3, the handwritten inventory of the present location for these folders. Page 9 is the second page of a three-page inventory for drawer number 2 in cabinet B. The identical entry appears on the fifth line from the top of this page, immediately following "Weathfug-Food Stamp Fraud" and immediately preceding "Weathfug-Mail Service Agencies."

Classification of the above two entries was not noted during the initial classification review. Subsequent copies, including those furnished for disclosure to the defense, have been corrected.

NOTE: Instant letter necessitated by incorrect number in reflet and subsequent classification action.

JLT:dmd dmd
(3)

b6
b7C

8131
JUL 26 1978

MAILED 13
JUL 25 1978
FBI

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

MAIL ROOM ☒

8 4 SEP 14 1978

Greenberg/Gray-2470

FBI/DOJ

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

1/ Memorandum

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

TO : Mr. Bassett *proposed*

DATE: 7-31-78

FROM : [redacted] *4-1*
b6
b7C

SUBJECT: RESPONSE TO DEFENSE REQUEST FOR *0*
DISCOVERY IN U. S. vs. L. PATRICK GRAY III, ET AL *wcr*

PURPOSE: To report the release of one employee to her former unit and the gain of one employee for temporary assignment.

DETAILS: As of July 31, 1978, [redacted] will return to her former unit and [redacted] will report for temporary assignment. *b6 b7C*

RECOMMENDATION: None, for information.

(Handwritten signature/initials)

Greenberg/Gray-2472

REC-110

[redacted] *b6 b7C*

- 1 - Finance and Personnel
- 1 - Mr. Bassett
- 1 - [redacted]

JLT:dmd *qmq*

14 AUG 31 1978



8 4 P 14 1978

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan.

FBI/DOJ

UNITED STATES GOVERNMENT

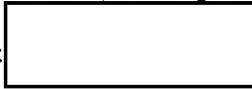
UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

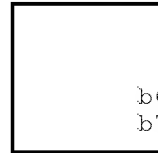
TO : Mr. Bassett *HNB/2*

DATE: 8/7/78

FROM :



b6
b7C



b6
b7C

SUBJECT: RESPONSE TO DEFENSE REQUEST FOR
DISCOVERY IN U. S. vs. L. PATRICK GRAY III, ET AL

PURPOSE: To report the release of one employee to his former unit and the gain of one employee for temporary assignment.

DETAILS: As of August 7, 1978, [redacted] will return to his former unit and [redacted] will report for temporary assignment.

RECOMMENDATION: None, for information.

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

APPROVED:

Director _____
Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____

Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____

Legal Coun. _____
Plan. & Insp. _____
Rec Mgnt. *HND*
Tech. Servs. _____
Training _____
Public Affs. Off. _____

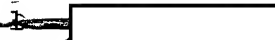
REC-110 62-118045-58

14 AUG 31 1978



b6
b7C

- 1 - Finance and Personnel
- 1 - Mr. Bassett



SLT
JLT:bjr
(4) *uj*

Greenberg/Gray-2475



8 4 SEP 14 1978

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION5
20
Memorandum

TO : Mr. Bassett

DATE: 8/9/78

FROM

b6
b7CSUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL.
DISCOVERY-INADVERTANT DISCLOSURE OF CIA
AND NSA INFORMATION

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.:
 Adm. Servs. _____
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 Ident. _____
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 Legal Coun. _____
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 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

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PURPOSE: To report notification by the Department to NSA and CIA of inadvertant disclosure by the Department of NSA and CIA classified information to Federal Grand Juries and to defense counsel in captioned case.

DETAILS: By letters dated 8/2/78 to the Directors of NSA and CIA, the Department has revealed inadvertant disclosure of classified information from those agencies to Federal Grand Juries in New York and Washington, D. C., and to defense counsel for Messrs. Gray, Felt, and Miller. Copies attached.

By letters dated 8/2/78 to the General Counsel of NSA and CIA the Department forwards copies of the transcripts of Grand Jury testimony by Messrs. Gray, Felt, and Miller, and by the late Assistant to the Director William C. Sullivan. Transcripts are to be reviewed by NSA and CIA to identify sensitive and classifiable information so that appropriate safeguards may now be taken to protect it. Copies of the letters, but not the enclosures, are attached.

The Department has indicated the transcripts will also be furnished to this office for review to identify sensitive FBI information. Copies for FBI review not yet furnished.

Arrangements have been made to deliver this correspondence by FBI Liaison Officers 8/8/78 as a courtesy, to evidence FBI concern over the matter, and because of the sensitivity of the information.

Notification resulted from persistent suggestions by the FBI. Documents involved in the inadvertant disclosure

Enclosures

- 1 - Mr. Adams - Enclosures (4)
 1 - Mr. McDermott - Enclosures (4)
 1 - Mr. Long - Enclosures (4)
 2 - Mr. Bassett - Enclosures (4)
 1 - Mr. Ryan - Enclosures (4)
- 3 - Mr. Cregar - Enclosures (4)
 1 - Mr. Kearns - Enclosures (4)
 1 - Mr. Whalen - Enclosures (4)
 (CONTINUED - OVER)

JLT:hjr/ada

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

[] to Mr. Bassett Memo
 Re: U. S. vs. L. Patrick Gray III, et al.
 Discovery-Inadvertant Disclosure of CIA and
 NSA Information

asures are needed by the prosecution for its case in chief, and are sought by the defense during discovery, presumably for use at trial. Although we have already taken care of NSA and CIA review of these documents during routine discovery, we are aware that the transcripts contain similar and identical sensitive information without markings, and are in the hands of all three defense counsel. Resolution of the matter is unavoidable.

The initial version of the notification gave the failure to mark classification on internal FBI documents as the sole cause of the inadvertant disclosures. At the insistence of the FBI, the cause given was modified to include the inexperience of both Departmental personnel and FBI Agents assigned to the investigation in the field of intelligence. Agents with little or no security backgrounds were selected on the specific instructions of the Department, which then overruled the FBI's plan to brief them on classification matters.

RECOMMENDATION: None. For the information of FBIHQ officials and for record purposes.

APPROVED: <i>WHL</i>	Adm. Serv. _____	Legal Coun. _____
Director _____	Crim. Inv. _____	Plan. & Insp. _____
Assoc. Dir. <i>pm</i>	Ident. _____	Rec. Mgnt. <i>HNB</i>
Dep. AD Adm. <i>pm</i>	Intell. _____	Tech. Servs. _____
Dep. AD Inv. _____	Laboratory _____	Training _____
		Public Affs. Off. _____

Greenberg/Gray-2477

Top Secret Control Number HO-18-1524

Originator of Material FBI-HQ
(FBI field division, FBIHQ or outside agency)

Letter ☒ Airtel ☐

Date of Mail 8-11-78

LHM ☐ Memo ☐

Report ☐ Other ☐

Teletype ☐

Captioned:

L. Patrick Gray III

This serial is under the control of the Top Secret Control Officer located in the Document Classification Office.

Authority - 62-116065

File number 62-118045-60

Greenberg/Gray-2488

PERMANENT SERIAL CHARGE-OUT

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
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Laboratory _____
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Plan. & Insp. _____
Rec. Mgnt. _____
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Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

TO : Mr. Bassett

DATE: 8/17/78

FROM : D. Ryan *DR*

1 - Mr. H. N. Bassett

1 - [redacted] b6

1 - Mr. D. Ryan b7C

SUBJECT: UNITED STATES V.

GRAY, ET AL.

W. Patrick III

On this date, Charles Alliman of the Security and Administrative Programs Staff, Department of Justice (the Department's Security Office), advised me former Special Agent [redacted] had been cleared effective 8/17/78 for access to "Top Secret." It is noted [redacted] is one of the former Special Agents whom attorneys for defendants have requested be afforded clearance in order to review FBI material relating to discovery in this matter.

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b7C

RECOMMENDATION: None. For information.

APPROVED:

Director _____
Assoc. Dir. _____
Dep. AD Adm. *DR*
Dep. AD Inv. _____

Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____

Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. *HWB/WLB*
Tech. Servs. _____
Training _____
Public Affs. Off. *GR*

DR:lfj *lfj*
(4)

REC-110

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62-118045-66

14 AUG 31 1978

Greenberg/Gray-2489



8 4 SEP 14 1978

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : The Director
: Federal Bureau of Investigation
Robert L. Keuch
FROM : Deputy Assistant Attorney General
: Criminal Division
SUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL

DATE: AUG 1

Assoc. Dir.	<input checked="" type="checkbox"/>
Dep. AD Adm.	<input checked="" type="checkbox"/>
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Asst. Dir.:	
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Training	<input type="checkbox"/>
Public Affs. Off.	<input type="checkbox"/>
Telephone Rm.	<input type="checkbox"/>
Director's Sec'y	<input type="checkbox"/>

FBI/DOJ

Reference is made to the memorandum of June 19, 1978 from John J. McDermott, Deputy Associate Director.

We will proceed in accordance with the information set forth in that memorandum. However, prior to any formal claim of privilege being submitted to the court for its determination, additional materials are required, specifically, a statement by the Secretary of Defense that he concurs in the position taken by the National Security Agency in response to your inquiry.

Under the applicable statute and case law, and consistent with the policies of the Department of Justice, when a claim of privilege for national security or national defense information is made, the claim must be made by the head of the department having the ultimate responsibility for classification of information. For example, when claims of privilege regarding national security electronic surveillances are made to the courts, the claim is signed by the Attorney General personally. Any claim for the NSA information referred to in the June 19 memorandum will similarly have to be made by the Secretary of Defense.

A request should therefore be made to the National Security Agency that they obtain the specific concurrence of the Secretary of Defense regarding the position they have taken as to the materials under discussion and the Secretary's agreement to execute a formal claim of privilege for submission to the court when, and if, such a submission becomes necessary.



8

AUG 14 1978

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

REC-110

14 AUG 31 1978

4-PVD

4
28
DATE: August 17, 1978

~~FEDERAL GOVERNMENT~~

TO: Director, National Security Agency
Attention: General Counsel

FROM: John J. McDermott
Deputy Associate Director
Federal Bureau of Investigation

SUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL
DISCOVERY PROCEEDINGS

Reference is made to your letter of May 23, 1978.
In accordance with our discussion, a copy of your letter was
made available to the Department of Justice. (gp)

By memorandum dated August 1, 1978, Mr. Robert L.
Keuch, Deputy Assistant Attorney General, Criminal Division,
furnished the attached response.

Since the discovery at this point is under the
informal system, the attached response is for your information.
We do anticipate a court ordered discovery in the near future,
and you will be advised accordingly.

Enclosure

1 - Mr. Bassett
1 - [redacted]

SENT
DIRECT

b6
b7C

REC-110

14 AUG 31 1978

62-118045-64
TO NSA VIA COURIER
ON 8-22-78
W. L. BROWN

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
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Legal Coun. _____
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Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

NOTE: Copy of Departmental memorandum being furnished to
NSA pursuant to approval of Robert L. Keuch on 8/4/78 as
furnished to SA [redacted]

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b7C

APPROVED:

Director _____
Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____

Adm. Serv. _____
Crim. Inv. _____
Ident. _____
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Laboratory _____

Legal Coun. _____
Plan. & Insp. _____
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Tech. Servs. _____
Training _____
Public Affs. Off. _____

PVD:dd

(5)
MAIL ROOM ☐

Greenberg/Gray-2501

FBI/DOJ

8 4 SEP 14 1978

UNITED STATES GOVERNMENT

Memorandum

~~FEDERAL GOVERNMENT~~

TO :
Federal Bureau of Investigation

b6 Per FBI
b7C

DATE: August 4, 1978

FROM : Francis J. Martin
Criminal Division

SUBJECT: United States v. Gray et al

L. Patrick

4/3
The government may wish to interview and/or subpoena for trial the various individuals whose homes were the subject of the surreptitious entries alleged in the indictment. Please provide current address information, to the extent available in Bureau files, on each of these individuals. Should your files also reflect that any of these individuals are represented by counsel please provide the counsel's name and address. These individuals are:

REC-110

62-118045-65

14 AUG 31 1978

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84 SEP 14 1978

Greenberg/Gray-2502



5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Mr. Francis J. Martin
Criminal Division

8-29-78

[redacted]
Federal Bureau of Investigation

b6
b7C

U.S. vs. L. PATRICK GRAY III, ET AL
DISCOVERY PROCEEDINGS

FEDERAL GOVERNMENT

In response to your letter of August 4, 1978, concerning current addresses and legal counsel of individuals who were targets of surreptitious entries which were the basis of prosecution in captioned case, the following information is furnished:

[redacted] has an address of [redacted] New York, New York 10009. She has been represented by [redacted] of the firm of Cohn, Glickstein, Lurie, Ostrin and Lubell, 1370 Avenue of the Americas, New York, New York 10019. She is also being represented in a cause of action against the United States and other defendants by [redacted] New York, New York 10025. This litigation, in which [redacted] is also a plaintiff, has Number 78 CIV 2244 in the Southern District of New York and is being handled by AUSA William Hibscher (FTS 662-9173).

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[redacted] is most recently known to be residing at [redacted] Brooklyn, New York. As mentioned above, she also is represented by [redacted] in current litigation.

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[redacted] was most recently known to be residing at [redacted] New York, New York. Our records disclose no representation by legal counsel.

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b7C

[redacted] was most recently known to be residing at [redacted] Berkeley, California 94707. She has been represented by [redacted]

b6
b7C

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Gene Rm. _____

ACLU Foundation of Northern California, Suite 301, 814 Mission Street, San Francisco, California 94103

REC-110

1 - Mr. Mintz (Attn: [redacted])

b6
b7C

JLT:dd

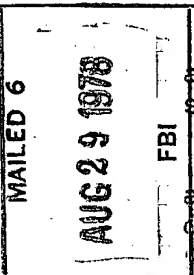
(6)

SEE NOTE PAGE TWO.

14 AUG 31 1978

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B1/DOJ



Sec'y
4 SEP 14 1978

[redacted] were most recently known to be residing at [redacted] Union, New Jersey, and are not known to be represented by legal counsel.

b6
b7C

[redacted] was most recently known to be residing at [redacted] Burlington, Vermont. He is not known to be represented by legal counsel.

b6
b7C

[redacted] was most recently known to be residing at [redacted] Marina Del Rey, California 90291. [redacted] may be represented by, or associated with, [redacted] Esquire, of Morrison, Paul, Stillman and Bailey, 110 East 59th Street, New York, New York 10022.

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The only pending litigation between the above individuals and the United States is that mentioned for [redacted] and [redacted] in which the three defendants in instant prosecution and [redacted] are also civil defendants.

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NOTE: Civil litigationnbeing handled by SA [redacted] of Legal Counsel Division.

Information contained in outgoing obtained from the following files:

[redacted] 190-5002; 197-583
197-583
no 190 or 197 file
190-5086
88-56609-316
163-35350; NY 100-166899
190-1936

b6
b7C

Greenberg/Gray-2504

b6
b7C

FEDERAL GOVERNMENT

Mr. Robert Gates, Special Assistant ~~to the President~~ 8-25-78
National Security Council
The White House

Federal Bureau of Investigation BY LIAISON
Defense Discovery Special
Room 6888, JEH
U. S. vs. L. PATRICK GRAY III, ET AL
DEFENSE DISCOVERY/CLASSIFIED MATERIAL

Enclosed is a package of copies of documents from FBI records together with a standard form cover sheet listing each document and explaining, in general terms, the necessity for referring these documents to your agency for your review.

This office is now engaged in reviewing FBI records to be provided to defense attorneys during discovery and possibly for later use by either the prosecution or the defense at trial. The prosecution involved is that announced on April 10, 1978, in which the former Acting Director and two other retired FBI officials have been charged with violating civil rights by surreptitious entries.

We must be able to determine from your reply the following: 1. Whether or not the document is properly classified under the current standards of Executive Order 11652. 2. What portions, if any, your agency feels should not be given to defense counsel during discovery for any of the following three reasons: a. Disclosure would compromise an ongoing investigation. b. Disclosure would compromise an informant or source. c. Disclosure would constitute undue embarrassment or damage to an unrelated third party. 3. What portions of the document, although accessible during discovery, should not be used in open court, eg., classified material not falling into any category under paragraph two, above, which may be exhibited to defense attorneys possessing proper clearances but which should not be used in open court. Marking material which remains classified denoting the classification level down to at least the paragraph level will normally suffice.

2 AUG 28 1978

You may make and retain or return all copies of this correspondence, the referral form, and the documents, at your option.

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
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Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

1 - Mr. Ryan
1 - Mr. Palmer

DELIVERED BY LIAISON
DATE 8/25/78

(SEE NOTE PAGE TWO)

SECRET

Material Attached

MAIL ROOM ☐

Greenberg/Gray-2505

FBI/DOJ

SEP 19 1978

Mr. Robert Gates, Special Assistant

Documents furnished may include both documents originated by your agency, FBI documents quoting information from your agency, and FBI documents concerning an area in which your agency has the primary or overriding interest. Complete documents will normally be furnished in order that you might see the material of interest to you in context. Partial documents will often be furnished when a significant portion of the material does not relate to your agency and is not necessary to understand the material and its context.

We will continue to encounter material of interest to your agency. This letter has been prepared in order to alert you more specifically to the anticipated continuing need for such referrals and to explain the object of the referral. In the future, we plan to make any necessary additional referrals by the use of the attached cover sheet only, if you have no objections.

The Department of Justice has requested us to seek the most expeditious handling of this material which may be possible under the circumstances. Any consideration you may be able to give their request will be appreciated.

Enclosure

NOTE: Future requests will be handled through liaison with cover sheet only, except when TOP SECRET or compartmentalized material is involved. When necessary, receipts will accompany the cover sheet. Each cover sheet identifies those documents being referred by serial and gives a more concise set of instructions regarding the review needed.

UNITED STATES GOVERNMENT

*Memorandum*UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

TO : Mr. Bassett *HNTB*

DATE: 8/29/78

FROM :  b6
b7Cb6
b7CSUBJECT: U.S. vs. L. PATRICK GRAY III,
W. MARK FELT, AND
EDWARD S. MILLER

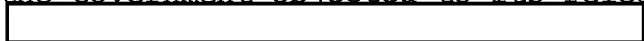
PURPOSE: The purpose of this memorandum is to advise of the court ordered discovery in captioned matter and problems presented by the same. (Copy of order attached.)

DETAILS: By way of background, the FBI has been providing materials to defense attorneys in captioned matter pursuant to an informal discovery agreement between the Government and the defense.

ST-130

REC-79

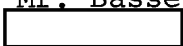
62-118045-69

On August 17, 1978, Judge William B. Bryant, United States District Court, District of Columbia, issued an order for discovery in those areas where the defendants sought information and the Government objected to its release. On August 25, 1978, SAs  met with Departmental Attorney Frank Martin to discuss Judge Bryant's order. The two areas of prime concern were the release to the Court of highly sensitive material concerning the Communist Party, USA (CPUSA) investigation and the release of information concerning the Weatherman Underground furnished by cooperative foreign intelligence services. We have, in the past, claimed privilege protecting such information. While Martin was not familiar with the CPUSA information, he stated the sensitivity of it had been brought to his attention by Deputy Assistant Attorney General Mary Lawton. Martin advised the Department was considering the filing of an affidavit in connection with this since production was ordered to the Court and not to the defense. He indicated Mary Lawton would be in contact with the Bureau on this. Since the nature of the information is not known to Martin, this matter was not further discussed with him and will be resolved with Ms. Lawton.

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b7C

Enclosure

ENCLOSURE

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - Mr. Cregar
- 1 - Mr. Mintz
- 1 - Mr. Bassett
- 1 - 

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(CONTINUED) - OVER

RECEIVED

62-118045

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PVD:ddv(7)

U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

79 OCT 17 1978



[] to Bassett Memo
Re: U. S. vs. L. Patrick Gray III,
W. Mark Felt, and
Edward S. Miller

The material furnished the Bureau by cooperative foreign intelligence has traditionally been protected from release pursuant to court ordered discovery. This problem was recognized by the Department in submitting its response to the defense motions for discovery. They stated "Accordingly, were the Court to order discovery to the defendants of certain intelligence information originating from agencies, domestic or foreign, external to the FBI, the Department of Justice might ultimately be required to move to dismiss this prosecution."

Martin explored the possibility of the FBI preparing a summary of the information in a fashion that would not disclose the source of the information. It would appear doubtful that such a summary could be prepared to the satisfaction of interested foreign intelligence services and the Court. Martin intends to discuss this matter with Prosecutor Barnet Skolnik to determine his views. We will await written instructions from the Department concerning this matter.

We have also, pursuant to the request of Deputy Assistant General Robert Keuch, advised the National Security Agency that in connection with the materials, the National Security Agency has refused to release to the defendants that they should make preparation for a claim of privilege. We additionally expect the Central Intelligence Agency to withhold material, and, of course, a similar claim may be necessary from them. The Central Intelligence Agency has not completed its review of material called for in this discovery.

RECOMMENDATION: For information.

APPROVED: <i>[Signature]</i>	Adm. Serv. _____	Legal Coun. _____
Director <i>[Signature]</i>	Crim. Inv. _____	Plan. & Insp. _____
Assoc. Dir. <i>[Signature]</i>	Ident. _____	Rec Mgnt. <i>[Signature]</i>
Dep. AD Adm. <i>[Signature]</i>	Intell. _____	Tech. Servs. _____
Dep. AD Inv. _____	Laboratory _____	Training _____
		Public Affs. Off. _____

Greenberg/Gray-2510

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :

v. :

Criminal No. 78-000179

L. PATRICK GRAY, III. :

W. MARK FELT :

and :

EDWARD S. MILLER. :

FILED

AUG 17 1978

JAMES F. DAVEY, Clerk

MEMORANDUM AND ORDER

Three former high officials of the Federal Bureau of Investigation are charged with conspiring to violate the Fourth Amendment rights of citizens by making illegal surreptitious entries into the homes of the families and friends of the Weatherman fugitives. 18 U.S.C. § 241. The government contends that Acting Director Patrick Gray orally gave "generic authorization" to certain F.B.I. officials to conduct surreptitious entries and searches (oftentimes called "black bag jobs") in their search for something which might reveal the location of the fugitives. W. Mark Felt was, during this period, Acting Associate Director of the F.B.I., and Edward S. Miller was Assistant Director, head of the Domestic Intelligence Division which supervised the F.B.I.'s Weatherman investigation. They are alleged to have authorized or concurred in the authorization of a number of the so-called black bag jobs.

In various motions the defendants seek dismissal of the indictment on several grounds, severance of their trials and broad discovery. Except for some of the requests for discovery, the government submitted its opposition thereto, and subsequent oral representations of all counsel were extensive.

62-118045-69

ENCLOSURE

1. DISMISSAL

(a) Prejudicial Pre-trial Publicity

The established procedure in the District of Columbia Circuit is to determine at voir dire whether the publicity generated before trial has so influenced prospective jurors that one accused of a criminal offense cannot be guaranteed "a fair trial by a panel of impartial, 'indifferent' jurors." Irvin v. Dowd, 366 U.S. 717, 722 (1961); Jones v. Gasch, 404 F.2d 1231 (D.C. Cir. 1967), cert. denied, 390 U.S. 1029 (1968). The Court finds the volume, content, tenor and timing of the publicity given these defendants are not so striking as to lead it to believe the defendants have been gravely prejudiced. United States v. Haldeman, 559 F.2d 31, 60 (D.C. Cir. 1976); United States v. Ehrlichman, 546 F.2d 910, 916-17 n.8 (D.C. Cir. 1976). The fact that the Justice Department has been the source of some of the publicity in this case is not determinative. The general level of public concern focused on these defendants does not appear to be great. See United States v. Coast of Maine Lobster Co., 538 F.2d 899 (1st Cir. 1976).

(b) Selective Prosecution

The Court agrees with the government that the defendants have failed to demonstrate invidious discrimination or bad faith in this prosecution. Oyler v. Boles, 368 U.S. 448 (1962). Defendants have cited cases in which prosecutions have been instituted to punish individuals for the exercise of their First Amendment rights of political expression. United States v. Falk, 479 F.2d 616 (7th Cir. 1973); United States v. Crowthers, 456 F.2d 1074 (4th Cir. 1972). These cases are not relevant since no such infringement of First Amendment rights or bad faith have been alleged by defendants.

(c) Pre-indictment Delay

The alleged pre-indictment delay in this case does not justify dismissal of the indictment. In United States v. Lovasco, 431 U. S. 783 (1977), the Supreme Court held that a court must examine two factors in determining whether pre-indictment delay so violates the due process rights of the accused that the indictment must be dismissed against him. First, the court should examine if prejudice has resulted to the defendant(s) and secondly what reasons the government had for not indicting the defendant(s) for a considerable period of time after the investigation began. The Court accepts the government's explanation that the complexities of this case -- legal and policy ones -- necessitated a delay between the start of the investigation and the indictment; and it does not appear that defendants will be greatly prejudiced by the death of one possibly important witness, William C. Sullivan, and several minor ones. In these circumstances prosecution of these defendants would not violate their rights in such fashion as to offend "the community's sense of fair play and decency." Rochin v. California, 342 U.S. 165, 173 (1952), cited in United States v. Lovasco, 431 U.S. at 790

(d) Prosecutorial Misconduct/
Improper Use of Successive Grand Juries/
Absence of Appropriate Signature on Indictment/
Improper Means of Obtaining Evidence

The claims of prosecutorial misconduct and other irregularities during the grand jury and indictment stages of these proceedings do not warrant dismissal of the indictment. The Special Attorney who heads this prosecution, and all other attorneys who appeared before the indicting grand jury, were Department of Justice attorneys properly appointed and directed to act for the United States,

pursuant to 28 U.S.C. § 515(a). Special Attorney Skolnik was therefore authorized to sign the indictment. Rule 7(c)(1) F.R. Crim. P. He and his associates have been "specifically directed" to pursue this prosecution by Assistant Attorney General Benjamin Civiletti, formerly head of the Criminal Division, pursuant to 28 U.S.C. § 515(a), and are attorneys for the government within the meaning of Rule 54(c), F.R. Crim. P.

The Court agrees with defendant Gray that no apparent reason exists for prosecutors to have discussions with jurors off-the-record during grand jury proceedings. Since the transcripts of such proceedings are under seal and the proceedings themselves are conducted in strict secrecy, the Court can conceive of no justification for the government holding off-the-record conversations with grand jurors. Also, defense counsel's objection to the prosecutor's rewording of jurors' questions before propounding them to the witness is understandable. Although the prosecutors may act in complete good faith, they may alter subtly the direction of the jurors' questions. The Court is unable to find any authority, however, for defendant Gray's assertion that such prosecutorial actions constitute misconduct so as to taint the indictment and require its dismissal.

The Court finds the government has not acted improperly in passing on documents and testimony from one grand jury to a successive grand jury investigating the same alleged illegalities.

Court approval is not required to use the minutes of one grand jury before a second grand jury in the same district. United States v. Garcia, 420 F.2d 309 (2d Cir. 1970). The Court is not persuaded by the court's reasoning in In Re Grand Jury Investigation of Banana Industry, 214 F. Supp. 856

(D. Md. 1963) that a different rule should be fashioned if prosecutors attempt to introduce evidence gathered before one grand jury before another grand jury sitting in another jurisdiction which is investigating the same alleged criminal offenses. The new rule 6(e) does allow disclosure of grand jury materials to a government attorney for use in the performance of his duty. United States District Court R. Crim. P. 6(e)(A)(i)(1977). Nor does Gray have, as he claims, a statutory right under Rule 6(g), F.R. Crim. P. to indictment within eighteen months of the commencement of a grand jury investigation. ^{1/}

(e) Failure to Charge Proper Offense

In a challenge to the right of the government to prosecute them on the felony charge under 18 U.S.C. § 241 ^{2/} the defendants contend that inasmuch as they were law-enforcement officers (executive officials of the F.B.I.) during all relevant times of the alleged conspiracy, the government is restricted on its ability to charge them with criminal conduct in this case by the provisions of 18 U.S.C. § 2236, ^{3/} which punishes as a misdemeanor warrantless searches of private dwellings by federal law enforcement officers.

^{1/} The Court also finds the government neither abused the grand jury procedure nor harassed defendant Gray in violation of his Fifth Amendment or statutory rights, Rule 6(g), F.R. Crim. P. by carrying on successive grand jury investigations and investigations in different jurisdictions.

^{2/} Section 241 in pertinent part provides:

If two or more persons conspire to injure, oppress, threaten or injure any citizen in the free exercise of enjoyment or any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . . they shall be fined not more than \$10,000 or imprisoned not more than ten years, or both . . .

^{3/} Section 2236 provides in relevant part:

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search . . . shall be fined for a first offense not more than \$1,000; and for a subsequent offense, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Defendants argue that under general principles of statutory construction the government must prosecute allegedly criminal conduct under the more specific statute rather than under one which is more general. Also, they urge that since penal statutes are always construed against the government, they can only be prosecuted for their actions under the statute which prescribed the milder penalty.

The most appealing argument of the defendants is that Section 2236 was enacted precisely to immunize to some extent federal law enforcement officers who overstep their legal authority in the pursuit of crime. They urge that the entries alleged in the indictment are exactly the kind of overzealous police behavior Section 2236 was meant to reach and immunize from prosecution as felonies.

The Court is not persuaded to this view. The statute speaks of the federal law enforcement officer who "searches any private dwelling used and occupied as such dwelling without a warrant directing such search" The surreptitious entries alleged in the indictment do not appear to be the warrantless searches to which § 2236 speaks. The warrant procedure assumes that an individual will know when and under what authority a government officer has the right to enter and search his house, and exactly what he does while there. It is an open process in which the individual whose home is searched is presented with a copy of the warrant. And even if no one is on the premises at the time of the search a copy of the process and a receipt for any property taken is left on the premises, Rule 41(d) F.R. Crim. P.; usually tacked onto the door or in some other conspicuous place. If no seizure is in fact made, the copy of the warrant indicates as much.

The type of search described in this indictment depends for its efficacy on secrecy. It is most closely compared to wiretapping, which to be effective must be seizure of conversations of a person who does not know he is being monitored. There is no indication that Congress contemplated such covert activity in connection with Section 2236. In fact, the words of Section 2236 appear not to apply to the conduct alleged in this indictment since it speaks of a search conducted "without a warrant directing such search." No warrant could be issued for a surreptitious search. Thus it appears that the police conduct which the statute relegates to misdemeanor status is not the same as alleged in the indictment.

At any rate, 18 U.S.C. § 241 which makes punishable as felonies conspiracies to violate the civil rights of citizens does not carry the limitation present in the general conspiracy statute, 18 U.S.C. § 371, which restricts certain conduct to the misdemeanor category. It appears that, regardless of the means employed, the type of conspiracy proscribed by 18 U.S.C. § 241 is a felony.

(f) Legal Insufficiency and Failure to State an Offense

The indictment sets forth the elements of the offense and the facts which the government contends constitute defendants' criminal action. The defendants have been, in other words, informed of the charges against them so that they can prepare an adequate defense, and be able to plead double jeopardy if the government attempts to bring a second prosecution against them after they have been once acquitted.

For the foregoing reasons all motions to dismiss are denied.

(g) Severance

Defendants Miller and Felt move for severance from defendant Gray, and Gray requests that his trial be severed from that of his two co-defendants. Relative to these requests the prosecution has made a proffer of the general nature of its evidence against all defendants.

Gray argues that Miller's and Felt's defenses will, in all likelihood, be that Gray as Acting Director of the F.B.I. directed them to carry out "black bag jobs" relating to the Weatherman Underground investigation. Gray flatly denies that he did. Gray disputes his co-defendants' account of the talk he gave at a SAC conference and Miller's account of a private conversation between Miller and Felt will say led them to believe Gray had authorized them to approve "black bag jobs" by F.B.I. agents.

In Rhone v. United States, 365 F.2d 980 (D.C. Cir. 1966), the court stated the test for severance for this Circuit: "where the defendants present conflicting and irreconcilable defenses and there is a danger that the jury will unjustifiably infer that this conflict alone demonstrates that both are guilty."

To the extent that conflict of defenses exists in this case it does not appear to be of such a nature that it will lead the jury to believe that all defendants are guilty.

In United States v. Gambrill, 449 F.2d 1148 (D.C. Cir. 1971), one defendant wishes to disassociate himself from what he judged was an incredible alibi of his co-defendant. The weakness of one defendant's alibi infected the credibility of his co-defendant's defense. Here one defendant is attempting merely to shift the blame from himself to the other defendants. The type of conflict present in this case

occurs frequently in criminal trials, but this circumstance does not require severance. ^{4/}

Defendant Gray's contention that the evidence against his co-defendants is so much greater in weight and amount than that against him that the trials must be severed is unpersuasive. The type of evidence which the government proffers that it will offer against Miller and Felt will be different from that which is offered against Gray. Yet the weight of the evidence against the two groupings of defendants does not seem so disparate as to prejudice any one in his defense. Apparently Bruton problems do not exist at this stage. Bruton v. United States, 391 U.S. 123 (1968). All three defendants seem ready to testify at trial, and the scope of each defendant's cross-examination of his co-defendants will not be unduly restricted. This is not a case where any defendant will secure exculpatory testimony from a co-defendant at a severed trial which he cannot secure at a joint trial. See United States v. Gleason, 259 F. Supp. 232 (D.C.N.Y. 1966). At least no defendant has made a sufficient showing to that effect.

The Court rejects defendant Miller's contention that he may be convicted primarily on inculpatory evidence introduced against him by his co-defendants, rather than by the evidence the prosecutors present. The government in putting on its case-in-chief must present enough substantial evidence against each defendant to survive motions for acquittal.

It appears to the Court that the motions to sever should be, and they are denied.

4/ To the extent that discussion relative to the issue in United States v. Erlichman, 546 F.2 910, at 929 (D.C. Cir. 1976) may suggest the contrary, I do not regard it as a mandate for severance in the circumstances of this case. My assessment of the likelihood of a fair trial for all the defendants in a joint proceeding is predicated upon the proffer of government counsel and the corresponding failure of the defendants to demonstrate the inevitability of unfairness.

2. DISCOVERY

The defendants' discovery motions seek information and materials which might support their positions on the several motions to dismiss the indictment, and also bolster their theories of defense to the charges. Inasmuch as the Court has denied the various motions to dismiss, all discovery requests in aid of such motions are denied. ^{5/}

Many of the requests which might relate to a theory of defense have been settled by the parties. Those remaining have been submitted for determination by the Court.

Defendant Gray's Requests

1. Defendant Gray seeks discovery to prove that any activity alleged to be illegal was undertaken without his knowledge or authorization. He seeks any information about warrantless surveillance techniques which took place from 1960 to the present to demonstrate that even after Hoover had ordered the end to "black bag jobs", agents in the field continued to carry them out.

The Court grants defendant Gray's discovery request 13 but narrows it to:

- (1) the period from 1966 (the date Hoover officially cut off "black bag jobs") to the present;
- (2) only those surreptitious entries and searches of the type alleged in the indictment; and
- (3) only those searches not authorized by the Attorney General or President.

5/ Prejudicial pre-trial publicity - Gray requests 51, 52, 53, 54, 55, 56 and 57; Felt requests E4 and E6.

Prejudicial pre-indictment delay - Gray requests 48;

Felt requests E1, E2, E3, and E5; Miller requests 19 and 21.
Selective prosecution - Gray requests 19, 20, 21, 22, 23, 24 and 25; Felt requests D1 - D6; Miller requests 22, 23, 24, 25, and 26

Prosecutorial misconduct - Gray requests 44, 45, 46 and 47.

It is reasonable for the Department of Justice to delete the names of participants and targets only if the general nature of the investigation or target can be described to the defendants.

The government should comply with Gray's discovery request 15 with respect to the "June" and "Do Not File" files with the same limitations as listed for Request 13. Request #16 is granted, but only with respect to reports and worksheets from any office out of which street agents would operate to carry out the surreptitious entries alleged in this indictment. The government need provide documents from only those inspections for the time period of the conspiracy alleged in the indictment.

Request #17 is denied because defendant Gray has failed to show the materiality of these investigations to his defense. So much of request #18 is granted as relates to the Weatherman Organization or to terrorists who might be understood to include the Weatherman Underground.

2. Gray seeks discovery which might reveal that these surreptitious entries were authorized by the President or the Attorney General, and would, therefore, have been legal. The Court agrees with the government that information about authorization for surreptitious entries in investigations other than that of the Weatherman fugitives is immaterial. Gray's requests 28 and 29 are denied. Insofar as the documents discuss the Weatherman fugitives or terrorist groups which could be reasonably understood to include the Weatherman fugitives, request #30 is granted. Similarly with respect to requests 31 and 32 the government must provide documents (F.B.I. files or communications between and among the White house, Department of Justice and F.B.I.) which speak of methods of dealing with the Weatherman fugitives and with terrorist groups which could be understood to include the Weatherman fugitives.

Requests 38 and 39 are denied.

3. Gray also suggests he can defend against the charges in the indictment on the grounds that the surreptitious entries were "conducted in response to a threat to the national security which justified the use of surreptitious entries without warrants." The law is clear in the area of wiretaps (to which surreptitious entries have been analogized) that only the Attorney General or President can authorize warrantless wiretaps in the name of national security; and they must do so in particular cases. Katz v. United States, 389 U.S. 347, 364 (1967); (White, J., concurring); Giordano v. United States, 394 U.S. 310, 314-315 (1969); United States v. United States District Court (Keith), 407 U.S. 297, 321-322 (1972); United States v. Ehrlichman, 546 F.2d 910, 925-928 (D.C. Cir. 1976).

In this Circuit the question has been left open whether or not a warrantless surreptitious entry is like a wiretap. Id. at 925. But here, as in Ehrlichman the Court must deny Gray's discovery on the grounds he has made no proffer that the President or Attorney General authorized this search. Thus, it could in no way have been legal. Requests 40, 41, 42, and 43 are denied.

Defendant Felt's Requests

The Court agrees with the government that Mr. Felt's discovery requests 1, 2, 3 and 4 should be denied on the grounds he has failed to make a proper showing of materiality [or reasonableness] as required by Rule 16. United States v. Haldeman, 559 F.2d 31, 75 n.88 (D.C. Cir. 1976), cert. denied sub nom. Mitchell v. United States, 431 U.S. 933 (1977).

Felt asks in requests 10 and 12 for F.B.I. and Justice Department documents concerning the Weatherman fugitives, their friends and their relatives, which the agencies received or

maintained in their ordinary course of business, and in request 14 asks for those communications the President might have had with executive department employees or Congress about terrorist activities in the last 14 years. Requests 10 and 12 are denied since the defendant has failed to show their materiality. However, so much of request 14 as relates to Presidential conversations with executive department employees concerning the Weatherman Organization or terrorist activities which could be understood to include the Weatherman fugitives, during the period of the conspiracy alleged in the indictment, is granted.

Felt also requests statements of co-conspirators, trial witnesses and persons questioned during the investigation whom the government will not call at trial. He asks, too, for information about inducements or threats offered to witnesses. This Court agrees with government's objections to these requests, and they are denied. (Felt's requests E1-E5)

Requests C1 and C2 for the time period of the alleged conspiracy are granted; but C3 (beyond those materials the government has agreed to turn over), is denied on the grounds the defendant has not made a showing of materiality. C4 and part of C8 are granted, as possibly relevant to Felt's defense of reasonable reliance on the authority of his superior. United States v. Barker, 546 F.2d 940, 947-954 (D.C. Cir. 1976). However responses to C8 are narrowed to all documentary materials of the Executive Branch from 1968 to 1976 which classified, designated, or categorized the Weatherman Organization as a threat to the national security, a foreign dominated organization, or a group which collaborated with foreign agents.

Since the pivotal decision of Screws v. United States, 325 U.S. 91 (1945) the "specific intent" requirement under sections 241 and 242 has been interpreted to force the government to prove that (1) the constitutional right allegedly violated is clearly defined and plainly applicable to the facts of the case, and (2) the defendant acted with the purpose of denying the victim that right and not for any personal reason. See also United States v. Ehrlichman, *supra* at 921. The first is a legal question for the judge to decide. The second is a factual determination for the jury. It is clear that the Fourth Amendment rights claimed to be violated are clearly delineated and in fact similar if not identical to those rights involved in the conspiracy prosecution in Ehrlichman. Therefore it is not open to Felt to argue that he did not know his actions were illegal or for Miller to assert he was not put on notice of the illegality of his actions. Because the Court judges that this defense is not open to Felt, and because it has denied defendants' motions for dismissal on the grounds of selective prosecution, it will deny discovery requests D1-D6.

In response to Felt's F2 and F4 the Court orders that it be furnished documentary materials relating to the President's Foreign Intelligence Advisory Board which discuss terrorist groups which reasonably could be understood to include the Weatherman fugitives; and documentary materials since June, 1972 which reveal the redesignation of previously designated domestic intelligence subjects to foreign intelligence subjects.

The Court denied Mr. Felt's other discovery requests primarily on the ground he has failed to show their materiality to any defense he may have.

Defendant Miller's Requests

For the same reasons stated relative to defendant Felt's defense of specific intent, defendant Miller's requests 1-3 and 6 are denied.

Requests 4, 5 and 9 are granted without limitations.

The remaining requests are granted in part, as follows:

No. 8, limited to documents issued by the President, Attorney General, Department of Justice or F.B.I.;

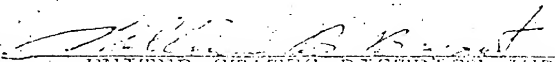
No. 10, insofar as it involves documents Mr. Miller might have seen during his tenure with the F.B.I.; and

No. 11, only as to F.B.I. or Justice Department documents, and only as to those with which Mr. Miller might have come into contact during his term at the F.B.I. The Court grants discovery with respect to the following subsections of No. 11, with the same restrictions as noted above: (b), (c), (d), (e), (i), and (j). The Court also grants (f), (g), and (h), but limits them to documents which refer to or involve the Weatherman fugitives.

Requests 12, 13, 14, 15, 16, and 17 insofar as they reach F.B.I., White House or Department of Justice documents which involve surreptitious entries in the Weatherman Underground investigation or refer to terrorist groups which can be reasonably understood to refer to the Weatherman fugitives.

SO ORDERED.

Aug 17, 1978


UNITED STATES DISTRICT JUDGE

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION*Memorandum*

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. ☒
 Rec. Mgnt. ☒
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

TO : Mr. McDermott *and*

DATE: 8-30-78

b6
b7CFROM : H. N. Bassett *HNB*

SUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL
 DISCOVERY PROCEEDINGS
 RELEASE OF PERSONNEL

PURPOSE: To record release of personnel.

DETAILS: The following personnel, except as indicated, will be released to return to their permanent assignments effective close of business Monday, 8-28-78:

SA [redacted] (cob 9-8-78)
 SA [redacted]
 SA [redacted]

[redacted]
 [redacted] (cob 8-30-78)
 [redacted]
 [redacted] (cob 9-1-78)
 [redacted] **SI-130**

b6
b7C

Sufficient manpower is being retained to handle processing of discovery materials mandated by recent court order of 8-17-78. In the event additional manpower is required, experienced personnel will be selected from those released in the interest of speed and efficiency, since time will then be of the essence.

1 - Mr. Bassett
 1 - Mr. Colwell
 1 - Mr. Cregar
 1 - Mr. Joseph
 2 - Mr. Long
 1 - Mr. Groover
 1 - Mr. Moore
 1 - Mr. Herndon

5 - Mr. Bailey
 1 - Mr. Awe
 1 - Mr. Ramey
 1 - Mr. Ryan
 1 - Mr. Zolbe
 2 - Mr. McCreight
 1 - Mr. Bresson
 1 - [redacted]

2 OCT 13 1978

b6
b7C

PVD:ddf

(17)

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

(CONTINUED - OVER)

79 OCT 17 1978

Bassett to McDermott Memo
Re: U. S. vs. L. Patrick Gray III, et al
Discovery Proceedings
Release of Personnel

It is anticipated that [] in particular, will be recalled to handle new or follow-up classification actions during the balance of the discovery or during the trial in the event SA [] is not available. The services of SAs [] may also be needed for areas in which they are familiar for short periods of time. [] may also be required for work in the MISUR/TESUR authorization record area for a period which is not expected to exceed one work week.

b6
b7C

The support of all FBIHQ Divisions who have furnished personnel for extended periods, in many cases from among their most competent employees, is deeply appreciated. We have been able to give this uniquely important project our best attention, as it obviously demanded and deserved.

Upon completion of the above changes, manning of the special will be as follows:

SA []
SA []
SA []
SA []
[]

b6
b7C

Separate memoranda for individual evaluation are being submitted for departing personnel and to cover the status of Consultant [] (retired SA).

b6
b7C

RECOMMENDATION: None. For record and information purposes only.

APPROVED:	Adm. Serv. _____	Legal Coun. _____
	Crim. Inv. _____	Plan. & Insp. _____
Director _____	Ident. _____	Rec. Mgmt. <u>HNB</u>
Assoc. Dir. _____	Intell. _____	Tech. Servs. _____
Dep. AD Adm. <u>OK</u>	Laboratory _____	Training _____
Dep. AD Inv. _____		Public Affs. Off. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE:

L. PATRICK GRAY, III

Petitioner

No. _____

PETITION FOR A WRIT OF MANDAMUS TO
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
AND FOR OTHER RELIEF

OF COUNSEL:

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Building
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301-547-0500

Counsel for Petitioner

NOT RECORDED

2 OCT 13 1978

1- ENCLOSURE

September 13, 1978

79 OCT 17 1978

Greenberg/Gray-2538

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. _____

In Re: L. Patrick Gray, III,
Petitioner

PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA
AND FOR OTHER RELIEF

STATEMENT OF FACTS

Petitioner, L. Patrick Gray, III, seeks a writ of mandamus to the Honorable William B. Bryant, Chief Judge, United States District Court for the District of Columbia, directing him to enter an order dismissing the indictment as to the defendant, L. Patrick Gray, III, or in the alternative, granting defendant Gray the discovery, severance and change of venue sought in the motions referred to below, and for such other and further relief as may appear proper.

Briefly stated, the events giving rise to this Petition are as follows:

62-118045-
ENCLOSURE

Mr. Gray was the Acting Director of the Federal Bureau of Investigation for a period of eleven months, from May, 1972 to April, 1973. On April 10, 1978, an indictment against Gray (R. 1) was purportedly returned by a grand jury in the United States District Court for the District of Columbia. Two other defendants were named in the indictment: W. Mark Felt, Acting Associate Director of the FBI, and Edward S. Miller, Assistant Director, head of the Domestic Intelligence Division, which supervised the FBI's Weatherman investigation. Both Miller and Felt were career officials of the FBI and between them had a combined experience of 52 years with the Bureau. The indictment purported to charge that Gray, Miller and Felt conspired to violate the rights of citizens by utilizing the technique of "surreptitious entries" into premises occupied by friends and relatives of Weatherman fugitives in search of information which might lead to the whereabouts of such fugitives in violation of 18 U.S.C. Section 241.

On May 22, 1978, defendant Gray filed certain motions which will be discussed below.

1. Gray's Motion for Severance.

Defendant Gray moved for a severance of his trial from that of the other defendants (R. 397)¹, urging that his defense to the charges against him was fundamentally and irrevocably in

¹The designation "(R. ____)" refers to the two volumes of exhibits filed herewith, which comprise relevant portions of the record in the trial court.

conflict with the defense tendered by defendant Miller (R. 398), that the weight of the evidence against defendants Miller and Felt was far greater than the weight of the evidence against him (R. 398), and that the grand jury statements by defendants Miller (R. 656-57, 702-05) and Felt (R. 749, 793-94) containing incriminating statements as to Gray, inadmissible as to Gray, required a severance under the principle of Bruton v. United States, 391 U.S. 123 (1968).

Gray's motion for severance was accompanied by a substantial memorandum (R. 400-09) and supported by a substantial reply memorandum and exhibits (R. 426-38). The essence of Gray's position, more fully set out in these memoranda, was that Miller and Gray are "on a collision course" because Miller claims Gray authorized so-called "bag jobs" in domestic cases and Gray bitterly denies any such authorization. If Gray is forced to go to trial with Miller, he will be caught in the hostile cross-fire of the prosecution and his co-defendant. Under such circumstances, a severance is required. See Rhone v. United States, 365 F. 2d 980, 981 (D.C. Cir. 1966); United States v. Robinson, 432 F. 2d 1348, 1351 (D.C. Cir. 1970); United States v. Bolden, 514 F. 2d 1301, 1310 (D.C. Cir. 1975); United States v. Gambrill, 440 F. 2d 1148, 1162-63 (D.C. Cir. 1971) and the discussion in the memoranda in support of Gray's motion for severance relative to the implications of United States v. Ehrlichman, 546 F. 2d 910, 929 (D.C. Cir. 1976) (R. 405-06).

Greenberg/Gray-2541

Moreover, it is now clear that there is a gross disparity in the weight of the evidence against Gray, as contrasted with the evidence against the defendants Miller and Felt. It is undisputed that Gray knew absolutely nothing about the surreptitious entries alleged in the indictment. He was never consulted about them either before or after they occurred. Gray never saw any of the memoranda generated in connection with these entries. He was never apprised of the results of such entries. In short, Gray knew nothing about the particular entries which form the basis for overt acts 6 - 32 of the indictment (R. 3-6). In fact, overt acts 30 - 32 occurred after Gray was no longer associated in any way with the FBI.

Perhaps the most graphic illustration of Gray's lack of knowledge is found in the Government's Responses to Gray's Request for a Bill of Particulars. Because the request and response are separate documents (R. 230-37, 257-59), the pertinent requests followed by the responses thereto are set out below:

"12. As to Overt Act No. 1, specify the date, time, place and substance of the conversation alleged therein.

A. The request impermissibly seeks as particulars what is in fact evidentiary details much of which has been supplied as discovery and/or will be supplied 30 days before trial as Jencks and Brady material, (if any) . . .

13. As to Overt Act No. 2, identify by name and last known address the 'group of F.B.I. officials' referred to therein and state the substance of the remarks allegedly made by Mr. Gray on the occasion described.

A. See 12 above.

14. As to Overt Act No. 4, identify by name and last known address the 'group of F.B.I. officials' referred to therein, and state the substance of the remarks allegedly made by Mr. Gray on the occasion described.

A. See 12 above.

15. As to Overt Act No. 5, identify by name and last known address the 'F.B.I. agents' referred to therein and the person or persons who gave the 'lecture' referred to.

A. See 12 above.

16. As to Overt Act No. 5, state the substance of the lecture allegedly given as referred to therein.

A. See 12 above.

17. As to Overt Act No. 6, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the memorandum referred to therein during his tenure as acting director of the F.B.I.

A. No.

18. As to Overt Act No. 7, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the surreptitious entry described therein during his tenure as acting director of the F.B.I.

A. No.

19. As to Overt Act No. 8, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the memorandum described therein during his tenure as acting director of the F.B.I.

A. No.

20. As to Overt Act No. 9, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the communication described therein during his tenure as acting director of the F.B.I.

A. No.

21. As to Overt Act No. 10, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to either the memorandum or the conversation referred to therein during his tenure as acting director of the F.B.I., and identify the person with whom defendant Miller is alleged to have spoken, and the time and place of such conversation.

A. No, see 12 above.

22. As to Overt Act No. 12, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the surreptitious entry described therein during his tenure as acting director of the F.B.I.

A. No.

23. As to Overt Act No. 12, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the memorandum described therein during his tenure as acting director of the F.B.I.

A. No.

24. As to Overt Act No. 13, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the communication referred to therein during his tenure as acting director of the F.B.I.

A. No.

25. As to Overt Act No. 14, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to either the memorandum or the conversation referred to therein during his tenure as acting director of the F.B.I., and identify the person with whom defendant Miller is alleged to have spoken, and the time, place and substance of such conversation.

A. No, see 12 above.

26. As to Overt Act No. 15, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the surreptitious entry described therein during his tenure as acting director of the F.B.I., and identify by name and last known address the 'agents' referred to therein.

A. No, see 12 above.

27. As to Overt Act No. 16, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the communication referred to therein during his tenure as acting director of the F.B.I.

A. No.

28. As to Overt Act No. 17, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the surreptitious entry described therein during his tenure as acting director of the F.B.I., and identify by name and last known address the 'agents' referred to therein.

A. No, see 12 above.

29. As to Overt Act No. 18, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the communication described therein during his tenure as acting director of the F.B.I.

A. No.

30. As to Overt Act No. 19, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the surreptitious entry described therein during his tenure as acting director of the F.B.I., and identify by name and last known address the 'FBI agents' referred to therein.

A. No, see 12 above.

31. As to Overt Act No. 20, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the communication described therein during his tenure as acting director of the F.B.I.

A. No.

32. As to Overt Act No. 21, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the surreptitious entry described therein during his tenure as acting director of the F.B.I., and identify by name and last known address the 'FBI agents' referred to therein.

A. No, see 12 above.

33. As to Overt Act No. 22, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the communication described therein during his tenure as acting director of the F.B.I.

A. No.

34. As to Overt Act No. 23, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to either the memorandum or the conversation referred to therein during his tenure as acting director of the F.B.I., and identify the person with whom defendant Miller is alleged to have spoken and the time, place and substance of such conversation.

A. No, see 12 above.

35. As to Overt Act No. 24, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the surreptitious entry described therein during his tenure as acting director of the F.B.I.

A. No.

36. As to Overt Act No. 25, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the memorandum referred to therein during his tenure as acting director of the F.B.I.

A. No.

37. As to Overt Act No. 26, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the surreptitious entry described therein during his tenure as acting director of the F.B.I.

A. No.

38. As to Overt Act No. 27, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to either the memorandum or the conversation referred to therein during his tenure as acting director of the F.B.I., and identify the person with whom defendant Miller is alleged to have spoken, and the time, place and substance of such conversation.

A. No, see 12 above.

39. As to Overt Act No. 28, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the surreptitious entry described therein during his tenure as acting director of the F.B.I., and identify by name and last known address the 'agents of the FBI' referred to therein.

A. No, see 12 above.

40. As to Overt Act No. 29, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the memorandum referred to therein during his tenure as acting director of the F.B.I.

A. No.

41. As to Overt Act No. 30, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the communication referred to therein during his tenure as acting director of the F.B.I.

A. No.

42. As to Overt Act No. 31, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the surreptitious entry described therein during his tenure as acting director of the F.B.I., and identify the 'agents of the FBI' by name and last known address referred to therein.

A. No, see 12 above.

43. As to Overt Act No. 32, state whether or not the Government contends that the defendant Gray was ever made aware of or consulted with regard to the communication referred to therein during his tenure as acting director of the F.B.I.

A. No."

In sharp contrast, Miller and Felt have acknowledged that in varying roles, one or the other of them reviewed requests to make entries received from field agents, determined whether or not to authorize the entry, received the results of the entries, and made memoranda in that regard -- all without advising Gray. Under these circumstances, Gray contends that a severance should be granted, lest he be engulfed in the tidal wave of evidence against Miller and Felt. See United States v. Kelly, 349 F. 2d 720 (2d Cir. 1965); United States v. Gambrill, supra at 1159; United States v. Leonard, 494 F. 2d 955, 966 (D.C. Cir. 1974); McHale v. United States, 398 F. 2d 757, 758 (D.C. Cir. 1968) and the discussion in the memoranda filed on Gray's behalf (R. 406-09, 426-32).

The allegations as to conflicting defenses contained in the motion were confirmed by the Government's memorandum in support of its response to requests for discovery (R. 851-52).

The allegations as to disparity in the weight of the evidence were confirmed by the Government's Bill of Particulars (R. 230-37, 257-59), as well as the aforesaid memorandum (R. 851-52).

The allegations as to Bruton statements were confirmed by the aforesaid grand jury transcripts delivered to the court (R. 656-57, 702-05, 749, 793-94). Notwithstanding the provision of F.R.Cr.P. Rule 14 that "for ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial", cited to the court by Gray (R. 400 n.1), the court imposed no such requirement before ruling on the motion and upheld the government's refusal (R. 839) to produce the Rule 14 materials called for by Gray's Discovery Request No. 10 until 30 days before trial.

In its ruling on severance, the Court expressly declined to follow the standard for severance clearly enunciated by this Court in United States v. Ehrlichman, 576 F. 2d 910, 929 (D.C. Cir. 1976) (R. 390 n.4). Contrary to even the Government's analysis, the court minimized the disparity in the weight of the evidence against Miller and Felt, who concededly participated in the overt acts alleged as acts 6, 10, 14, 23 and 27 of the indictment (R. 3-6) as compared with that against Gray, who concededly did not participate

and was not even aware that such acts occurred (R. 230-37, 257-59). The court minimized the fact acknowledged by it at the opening of its opinion that the case against Gray rests on an allegation that he "orally gave 'generic authorization'" (R. 382) and the fact that the Government has conceded that as to the occasions of these oral statements "some attendees do not recall such remarks" (R. 839) as well as the fact that the agendas to which overt acts 3 and 4 made reference were before the court (R. 433-38) and were innocuous in character.

2. Gray's Motion to Dismiss for Abuse of Grand Jury Process.

On May 22, 1978, Gray moved to dismiss the indictment on the basis of various irregularities in the grand jury process which denied Gray the rights accorded him by the Sixth Amendment as a felony defendant to indictment by a properly functioning grand jury. These irregularities included the action of Government counsel in totally precluding questioning by grand jurors of Mr. Gray during or after his testimony (R. 449-50, 456, 462, 620-21), the action of Government counsel in advising the grand jurors that the decision whether to indict Gray was one not for the grand jury but for the grand jury and no less than ten "honorable men and women" (R. 450), Government counsel who flooded the grand jury room during and after Gray's testimony, and the action of Government counsel in placing off the record all comments or questions by grand jurors or by prosecutors to grand jurors, all the subject of Gray's motion to dismiss the indictment for prosecutorial misconduct

before the grand jury (R. 54, 58-63, 335-38). The Government tendered no explanation for the unparalleled misconduct of Government counsel before the grand jury (R. 294 n.4). The Court, notwithstanding its findings that "no apparent reason exists for prosecutors to have discussions with jurors off the record during grand jury proceedings" and that "defense counsel's objection to the prosecutor's rewording of jurors' questions before propounding them to the witness is understandable," denied relief on the curious ground that no precedent existed for dismissal of the indictment for such misconduct (R. 385), there being no other previously reported cases of such misconduct.

3. Gray's Motion to Dismiss for Prejudicial Pretrial Publicity.

On May 22, 1978, Gray also moved to dismiss the indictment on the basis of other unparalleled irregularities in the grand jury process (R. 94-166, 313-26), denying him his constitutional right to a properly returned indictment. These derived from a large number of press statements made by the initial team of prosecutors investigating Gray (R. 97-99, 128-50) ascribed by the press to Department of Justice sources, derived also from two public statements by the Attorney General of the United States following indictment, declaring that subordinate officials having nothing to do with the acts alleged in the indictment were not prosecuted because "I thought they were told to do it" and further suggesting that the instant indictment was of limited concern because the

indicted officials "would not have much done to them in the end" (R. 151-54, 100, 156-61, 321-22), and derived also from volunteered testimony of the original prosecution team before a Congressional committee after return of the indictment (R. 100-01, 160, 871 ff.). The Government, in its response, failed to tender or proffer any affidavits from the original team of Government lawyers which in any way would answer or dispel the inference from press accounts that they made repeated extrajudicial press statements in violation of court rules, the Code of Professional Responsibility, and the Department of Justice's own published guidelines for the conduct of Government attorneys, or which shed any light, favorable or otherwise, on the circumstances surrounding their volunteered appearance before a Congressional committee. The Government's response effectively concedes the impropriety of the Attorney General's remarks (R. 280-81).

The action of Government counsel in prohibiting on-the-record questions or comments by grand jurors or statements or questions by grand jurors while witnesses were present rendered it difficult to determine from examination of the grand jury transcript that the massive amount of Government-generated publicity was non-prejudicial. Under these circumstances, inquiry into the exact nature of that publicity was clearly appropriate. Notwithstanding this, the Court denied (R. 391 n.5) defendant Gray's motions for discovery as to questions by grand jurors and Government-generated publicity (R. 208-10), refrained from requesting any affidavits or

internal investigation from the Justice Department, refrained from any form of criticism or censure of the outrageous conduct of Government counsel, including the Chief of the Criminal Section of the Civil Rights Division, and disposed of defendant Gray's motion in two sentences (R. 383).

4. Gray's Motion for Change of Venue.

On May 22, 1978, defendant Gray filed a motion for change of venue (R. 184) pointing out the unfairness of requiring Gray to defend himself nearly 400 miles from his home, particularly where medical testimony indicated that this would be a highly aggravating factor relative to Gray's medical condition (R. 192). The court, in its ruling, totally failed to discuss or expressly rule on this motion, but instead established an October 23, 1978 trial date in the District of Columbia.

5. Gray's Motion to Dismiss the Indictment on Grounds of Duplicity.

On May 22, 1978, Gray filed a motion to dismiss the indictment on grounds of duplicity (R. 177) and filed memoranda in support thereof (R. 179-182, 332-335). It is Mr. Gray's position that the indictment on its face alleges two conspiracies, based essentially on the fact that certain entries charged as overt acts pursuant to a conspiracy took place after Gray was no longer acting director of the FBI and therefore, could not possibly have occurred with his participation or pursuant to his authority. The court, in its ruling of August 17, 1978, declared "all motions to dismiss are denied" (R. 388) and utterly failed to discuss or

in any manner consider the motion to dismiss on grounds of duplicity.

6. Gray's Motion to Dismiss for Failure to Indict Under the Appropriate Specific Statute.

Defendant Gray moved to dismiss the indictment on the grounds that the specific statute, Title 18, Section 2236, rather than the general statute, Section 241, was the statute under which the Government was required to proceed. (See the discussion at R. 368-378). The court, though obviously troubled by the Government's indictment under a highly general felony statute rather than a more specific misdemeanor statute (R. 386-88), failed to come to grips with many important considerations bearing on this question raised by defendants Felt and Gray, including the Government's prior construction in practice of Section 241 (R. 19), the legislative history of Section 2236 (R. 304), the view taken of the scope of the two statutes in recent revision proposals (R. 373-74), and the disregard of the limiting language in Section 241 limiting prosecutions under that section for trespassing on premises to persons who "go in disguise." (R. 373).

7. Gray's Motion to Dismiss the Indictment on Grounds of Legal Insufficiency.

On May 22, 1978, defendant Gray filed a motion to dismiss the indictment on grounds of legal insufficiency (R. 35, 341-358). In this motion, Gray urged two grounds for dismissal: 1) that the indictment omitted words of criminality, an objection raised by all defendants and, 2) that as to Gray alone the indictment read with the bill of particulars proceeded on a theory of "generic authori-

zation" or vicarious liability inconsistent with the nature of 18 U.S.C., Section 241, which defines an offense of specific intent. Although in its opinion the court discussed briefly the first ground of insufficiency (R. 388) and although its opinion elsewhere recognized the continuing applicability of the principle of Screws v. United States, 325 U.S. 91 (1945), accurately described as a "pivotal decision," (R. 395), the opinion totally failed to discuss Gray's challenge to the Government's theory of generic authorization or vicarious liability. Moreover, the Court failed utterly to deal with the serious contention that a charge alleging a conspiracy to use the "technique of surreptitious entry" does not state a crime. Given the fact that "surreptitious entries" as such are not criminal acts, in the absence of a positive charge by the grand jury that the entries in question were warrantless or unauthorized, the indictment fails to allege an offense. See the discussion at R. 35-50. The court failed utterly to deal with the issues raised by said motion to dismiss for insufficiency.

8. Gray's Motions to Dismiss the Indictment for
Absence of an Authorizing Signature, Improper
Use of Successive Grand Juries, and for
Selective Prosecution.

On May 22, 1978, defendant Gray filed a motion to dismiss the indictment for absence of a sufficient authorizing signature (R. 54, 358), for improper use of successive grand juries (R. 64, 335) and for selective prosecution (R. 167, 327), all grounds going to whether a prosecution was properly initiated, not whether the indictment was legally sufficient. The court, in its opinion on

on the first of these issues, improperly equated authority to appear before the grand jury to authority to sign an indictment (R. 385). In its opinion on the second issue, the court expressly declined to follow directly pertinent authority bearing on its determination (R. 386). In its opinion on the issue of selective prosecution, the court overlooked and failed to decide Gray's contention that the prosecution against him was invidiously motivated by the desire to proceed against a political appointee rather than more culpable career officials and failed to discuss the support given this contention by Congressional committee testimony of prosecutors themselves (R. 329, 871 ff.).

The court also totally failed to discuss Gray's contention, like most of the other motions, peculiar to him only, that the totality of the Government's misconduct rendered appropriate dismissal of the indictment as to him (R. 362-66).

9. Gray's Motion to Dismiss for Prejudicial
Pre-Indictment Delay.

The court, in ruling on Gray's motion to dismiss on grounds of pre-indictment delay "accepted the government's explanation that the complexities of this case -- legal and policy ones -- necessitated a delay between the start of the investigation and the indictment." (R. 384), but failed even to discuss sworn contrary testimony as to the reasonableness of the delay by some of the prosecutors themselves (R. 871 ff.).

STATEMENT OF ISSUES PRESENTED

1. Whether the District Court abused its discretion in denying Gray's motion for severance.

2. Whether the District Court abused its discretion in permitting an indictment to go forward returned by a grand jury impaired in the exercise of its own constitutional functions as to Gray by improper directions by Government counsel, restrictions on questioning of witnesses by grand jurors, presence of excessive numbers of Government counsel in the grand jury room, and massive Government-generated pre-trial publicity.

3. Whether the District Court abused its discretion in denying Gray discovery as to Government-generated pre-trial publicity, notwithstanding the absence of any factual response or representation by the Government as to the apparent flagrant violations of applicable rules, regulations and canons by its officers.

4. Whether the District Court abused its discretion in permitting an improperly instituted prosecution to go forward by overruling the motions relating to absence of an authorizing signature, improper use of successive grand juries, selective prosecution and pre-indictment delay.

5. Whether the District Court denied Gray the benefit of the ordinary course of law by failing totally to rule on his motion for change of venue.

6. Whether the District Court denied Gray the benefit of the ordinary course of law by failing totally to rule on his

motions to dismiss founded on duplicity, on legal insufficiency of the Government's theory of "generic authorization" and vicarious liability, and on the totality of the Government's conduct of the prosecution as to him.

7. Whether the District Court abused its discretion in failing, in its ruling on the motion to dismiss upon the ground that the indictment was returned under Section 241 rather than Section 2236, to consider the prior construction of Section 241, the legislative history of Section 2236, and the limiting language as to trespasses on premises in Section 241.

STATEMENT OF REASONS WHY THE
WRIT SHOULD ISSUE

1. This Court has jurisdiction to issue the extraordinary writs prayed for by virtue of the All Writs Statute, 28 U.S.C. Section 1651.

2. As to the question of severance raised as Issue 1 above, the appropriateness of review by mandamus is recognized in numerous cases. See United States v. Garber, 413 F. 2d 284 (2d Cir. 1969); Application of Gottesman, 332 F. 2d 975 (2d Cir. 1964); Application of Edwards, 375 F. 2d 108 (2d Cir. 1967).

3. As to the question of proper institution of the prosecution raised as Issues 2 and 4 above, the appropriateness of review by mandamus is recognized in such cases in this circuit as Brown v. Fauntleroy, 442 F. 2d 838, 842 (D.C. Cir. 1971); Blue v.

United States, 342 F. 2d 894, 900 (D.C. Cir. 1964); United States v. King, 482 F. 2d 768 (D.C. Cir. 1973); Ross v. Sirica, 380 F. 2d 557 (D.C. Cir. 1967). As to the appropriateness of dismissal, see also United States v. Wells, 163 F. 313 (C.C. Ida. 1908); United States v. Caesar, 368 F. Supp. 328, 332 (E.D. Wisc. 1973); United States v. Houghton, 554 F. 2d 1219, 1224 (1st Cir. 1977); United States v. Sweig, 316 F. Supp. 1148, 1153-55 (S.D.N.Y. 1970); United States v. Grassia, 354 F. 2d 27, 29 (2d Cir. 1965); United States v. Heffner, 420 F. 2d 809 (4th Cir. 1970).

4. As to the discovery question raised as Issue 3 above, the appropriateness of review by mandamus is recognized in In Re Ellsberg, 446 F. 2d 954 (1st Cir. 1971); United States v. Hughes, 413 F. 2d 1244 (5th Cir. 1969); Madison-Lewis, Inc. v. McMahon, 299 F. 2d 256 (2d Cir. 1962).

5. As to the questions involving failure to give rulings raised as Issues 5, 6 and 7 above, the appropriateness of review by mandamus is recognized in such cases as United States v. Kysar, 459 F. 2d 422 (10th Cir. 1972). "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Roche v. Evaporated Milk Assn., 319 U.S. 21, 26 (1943).

6. As to the questions involving change of venue raised as Issue 5 above, the appropriateness of review by mandamus is recognized in Jones v. Gasch, 404 F. 2d 1231 (D.C. Cir. 1967); Tasby v. United States, 451 F. 2d 394 (8th Cir. 1971); and see Platt v. Minnesota Mining & Mfg. Co., 376 U.S. 240.

7. On mandamus in criminal cases generally, see Comment, Supervisory and Advisory Mandamus Under the All Writs Act, 86 Harv. L. Rev. 595 (1973); United States v. United States District Court, 444 F. 2d 65 (6th Cir. 1971), aff'd. 407 U.S. 297, 307 n.3 (1971); United States v. Hughes, 413 F. 2d 1244 (5th Cir. 1969). It cannot be gainsaid that the present case is, in the language of the first case cited "in all respects an extraordinary case." Nor can it be denied that the second, third, fourth, sixth and seventh questions above listed are unsettled and of great general importance apart from this case, or that review by mandamus is appropriate as to questions of severance of change of venue.

In view of the fact that the lengthy memoranda which were previously filed in this case in support of various pre-trial motions have been reproduced for purposes of this Petition, and in order to avoid unnecessary delay in the preparation and filing of this Petition, the Petitioner respectfully invites the Court's attention to the following specific memoranda contained in the volumes of exhibits filed herewith:

1. Memorandum in Support of Defendant Gray's Motion to Dismiss Indictment for Legal Insufficiency	R. 35
2. Memorandum in Support of Defendant Gray's Motion to Dismiss the Indictment on the Basis of Absence of a Proper Authorizing Signature and Prosecutorial Misconduct before the Grand Jury	R. 54
3. Memorandum in Support of Defendant Gray's Motion to Dismiss Indictment on Grounds of Use of Successive Grand Juries and on Grounds of Misuse of the Grand Jury Process and Excessive Pre-Indictment Delay	R. 67
4. Memorandum in Support of Defendant Gray's Motion to Dismiss on Grounds of Prejudicial Pretrial Publicity	R. 94
5. Memorandum in Support of Defendant Gray's Motion to Dismiss Indictment on Grounds of Improper Selective Prosecution	R. 170
6. Memorandum in Support of Defendant Gray's Motion to Dismiss on Grounds of Duplicity	R. 179
7. Memorandum in Support of Defendant Gray's Motion for Transfer of Venue	R. 186
8. Reply Memorandum of L. Patrick Gray, III in Support of Motions to Dismiss Indictment	R. 311
9. Supplemental Memorandum of L. Patrick Gray, III, in Support of Motion to Dismiss on Grounds that 18 U.S.C. Section 2236 Renders 18 U.S.C. 241 Inapplicable to the Facts Alleged in this Indictment	R. 368
10. Memorandum in Support of Motion for Severance on Behalf of Defendant Gray	R. 400
11. Defendant Gray's Response to Opposition of the United States to Defendant's Motion for Severance and Relief from Prejudicial Joinder	R. 426

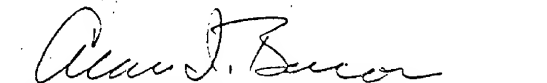
RELIEF REQUESTED

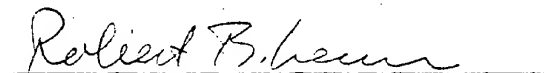
Petitioner prays that a Writ of Mandamus issue to the Honorable William B. Bryant, Chief Judge, United States District Court for the District of Columbia, directing him to enter an order dismissing the indictment as to L. Patrick Gray, III, or in the alternative, granting defendant Gray the discovery, severance and change of venue sought in the motions referred to above; and that Petitioner be granted such other and further relief as may appear proper.

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Baltimore, Maryland 21201
301-547-0500

Counsel for Petitioner,
L. Patrick Gray, III

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for a Writ of Mandamus to the United States District Court for the District of Columbia and for Other Relief was mailed, this day of September, 1978, to The Honorable William B. Bryant, Chief Judge, United States District Court for the District of Columbia, United States Courthouse, Washington, D.C.; to Barnet D. Skolnik, Esquire, U. S. Attorney's Office, U. S. Courthouse, Baltimore, Maryland 21201; to Frank D. Martin, Esquire, Department of Justice, Washington, D.C.; Brian Gettings, Esquire, 1400 N. Uhle Street, Arlington, Virginia; and to Thomas Kennelly, Esquire, 1000 Connecticut Avenue, N.W., Washington, D.C.


Alan I. Baron

Greenberg/Gray-2563

UNITED STATES GOVERNMENT

MemorandumUNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

TO : Mr. Bassett

DATE: 9-19-78

FROM :

[Redacted]

b6
b7C

SUBJECT: U. S. vs. L. PATRICK GRAY, ET AL

[Redacted]

b6
b7C

PURPOSE: The purpose of this memorandum is to advise of Department's request that we make camera available for forthcoming trial in captioned matter.

DETAILS: By memorandum dated 9-12-78 (copy attached), the Department has requested we make available at least two weeks before trial a document camera similar to the one used by the New York Office during the period 1972 to 1973. Trial Attorney Frank Martin, the author of the memorandum requesting the camera, was contacted by SA [Redacted] to determine if he knew what type of camera he had in mind. Martin was unable to further describe the camera in question, except that he was under the impression it was placed in an attache case. The trial in this matter is scheduled for 10-23-78.

b6
b7C

RECOMMENDATION: The Laboratory arrange, if possible, to comply with the Department's request by furnishing the document camera to SA [Redacted]

b6
b7C

ST-113

REC-39

62-118045-73X

1 - Laboratory Division

1 - Mr. Bassett

1 - [Redacted]

b6
b7C

22 DEC 6 1978

APPROVED:

Adm. Serv. _____
Crim. Inv. _____Legal Coun. _____
Plan. & Insp. _____

Director _____

Ident. _____

Rec. Mgnt. **HND**

Assoc. Dir. _____

Intell. _____

Tech. Servs. _____

Dep. AD Adm. _____

Laboratory _____

Training _____

Dep. AD Inv. _____

Public Affs. Off. _____

62-118045

SPEC. PROJ. SEC.
ASPVD:ddf
(4)

Greenberg/Gray-2566



UNITED STATES GOVERNMENT

Memorandum

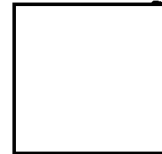
UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. ☒ _____
 Rec. Mgnt. ☒ _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

TO : Mr. Bassett *HBZ/fo*

DATE: 9-20-78

FROM :

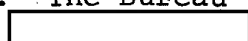
b6
b7Cb6
b7CSUBJECT: U. S. vs. EDWARD S. MILLER,
W. MARK FELT AND
L. PATRICK GRAY III

C *86*
 PURPOSE: To recommend attached teletype be sent to selected Field Offices to obtain information requested by the Department concerning reports given the Bureau by cooperative foreign intelligence services relating to the Weatherman.

DETAILS: By my memorandum 8-29-78, you were advised that in the court ordered discovery in captioned matter, Judge William Bryant ordered inter alia the release of all reports furnished by cooperative foreign intelligence services which Mr. Miller might have come in contact with while employed by the FBI as they relate to Weatherman fugitives. The Department is concerned with this aspect of the Judge's order, realizing that the interested cooperative foreign intelligence services would not agree to a release of such material ~~which~~ should the Government furnish such material absent such approval.

REC-79


62-118045-74

In an effort to satisfy the court and yet protect the cooperative foreign intelligence services, Barnet Skolnik, Chief Prosecutor in this matter, met with Mary Lawton, Deputy Assistant Attorney General of the Legal Counsel, Deputy Assistant Attorney General Robert Keuch of the Criminal Division, and Francis J. Martin, a trial attorney assigned to this case, to discuss ways of accommodating the court and the defense. The Bureau was not represented at this meeting. On 9-18-78, SA  met with Mary Lawton, Francis J. Martin, and Breck Willcox of the Department at which time they explained that while they had no intention of furnishing the information received by the FBI

b6
b7C

2 OCT 13 1978

Enclosure

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - Mr. Cregar
- 1 - Mr. Mintz
- 1 - Mr. Moore
- 1 - Mr. Bassett
- 1 - 

b6
b7C

Greenberg/Gray-2567

(CONTINUED - OVER)



PVD:ddf

79 OCT 1 1978

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

[] to Bassett Memo
Re: U. S. vs. Edward S. Miller,
W. Mark Felt, and
L. Patrick Gray III

b6
b7C

from cooperative foreign intelligence services, they did wish to be able to summarize for the court in some fashion the volume and nature of the information in question. As a result of that meeting, by memorandum dated 9-19-78, we were requested to obtain certain information covering both cooperative foreign intelligence services as well as certain third agencies. As The third agencies material relates to Central Intelligence Agency and National Security Agency information which, while relevant because of objections of those agencies, has not been furnished to the defense. The memorandum is erroneous in that it states we have segregated all the cooperative foreign intelligence service material called for by the court ordered discovery and that to gather the information sought in the memorandum would not be difficult. This was brought to the attention of both Frank Martin and Mary Lawton by SA [] Nonetheless, the Department desires the information to be gathered as expeditiously as possible, hopefully early in the week of October 2, 1978.

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In an effort to gather the material necessary, the attached teletype is directed to the border offices that would have direct dealings with the [] and to those offices which were origin in certain Weatherman investigations; the FBI Headquarters files of which have been processed for release to defense counsel. It is necessary to canvass these offices to insure insofar as possible that all such reports from cooperative foreign intelligence services are identified, and it is felt that this is the best way to achieve that end. The material, of course, will not be furnished to the court or the defense in the absence of discussions with the appropriate third agencies or foreign intelligence services. We are not requesting the Field to review their files concerning third agency material from the Central Intelligence Agency or the National Security Agency since that material has already been segregated at FBI Headquarters.

b7D

RECOMMENDATION: That attached teletype be approved and sent.

pd

[]

DM 6588

b6
b7C

APPROVED:

Director _____
Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____

Adm. Serv. _____
Crim. Inv. _____

Ident. _____
Intell. _____
Laboratory _____

Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____

AND

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

145

PAGE 1 OF 4

DATE SEPTEMBER 20, 1978	CLASSIFICATION UNCLAS CONFIDENTIAL	PRECEDENCE PRIORITY
#F145TPP AL BA BS BU BT CG CV DE MI NY PG SF SE WF DE HQ 18345		
40TPP 202054Z SEP 78		
FM DIRECTOR		
TO FBI NEW YORK PRIORITY		
FBI ALBANY PRIORITY		
14 FBI BALTIMORE PRIORITY		
FBI BOSTON PRIORITY		
12 FBI BUFFALO PRIORITY Greenberg/Gray-2569		
FBI BUTTE PRIORITY		
10 FBI CHICAGO PRIORITY		
FBI CLEVELAND PRIORITY		
8 FBI DETROIT PRIORITY		
FBI MILWAUKEE PRIORITY		
6 FBI PITTSBURGH PRIORITY		
FBI SAN FRANCISCO PRIORITY		
4 FBI SEATTLE PRIORITY		
FBI WASHINGTON FIELD PRIORITY		
2 BT		
UNCLAS		
DO NOT TYPE MESSAGE BELOW THIS LINE		
APPROVED BY <i>[Signature]</i>	DRAFTED BY PVD/DDF	DATE 9-20-78
ROOM 6888 - 4	TELE EXT. 3542	

DECLASSIFICATION AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 02-28-2009

DO NOT TYPE PAST THIS LINE

ST-130

REC-79

62-118045-75

2 OCT 13 1978

- 1 - MR. ADAMS
- 1 - MR. MC DERMOTT
- 1 - MR. CREGAR
- 1 - MR. MINTZ
- 1 - MR. MOORE
- 1 - MR. BASSETT

b6
b7C

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

SEP 21 1978

0344Z
TELETYPE

DO NOT FILE WITHOUT COMMUNICATIONS STAMP

FBI/DOJ

79 OCT 17 1978

Responses to
attached not
retained. Material
rec'd. Per

b6
b7C

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

PAGE 2

CONTINUATION SHEET
~~CONFIDENTIAL~~

PAGE TWO REDE HQ 0145 UNCLAS

U. S. VS. EDWARD S. MILLER, W. MARK FELT, AND L. PATRICK

GRAY III, BUDED SEPTEMBER 29, 1978.

(U) 18 THE BUREAU IN ACCORDANCE WITH COURT ORDERED DISCOVERY IN
CAPTIONED MATTER HAS BEEN PROVIDING MATERIALS TO CAPTIONED
16 INDIVIDUAL'S ATTORNEYS. IN THAT CONNECTION, THE COURT ORDERED
INFORMATION FURNISHED BY COOPERATIVE FOREIGN INTELLIGENCE
14 SERVICES BE FURNISHED TO THE DEFENSE. THE INTERESTED FOREIGN
INTELLIGENCE SERVICES HAVE NOT AGREED TO SUCH A RELEASE, AND THE
12 DEPARTMENT OF JUSTICE HAS PROTECTED THAT MATERIAL. BECAUSE OF
THE NATURE OF THIS CASE, THE DEPARTMENT HAS ASKED THE BUREAU TO
10 COLLECT CERTAIN INFORMATION SO THAT THEY MAY BE APPRISED OF THE
AMOUNT OF MATERIAL COVERED BY THE COURT ORDER AS WELL AS THE
8 NATURE OF THAT INFORMATION. WHILE MUCH OF THE MATERIAL IS IN
HEADQUARTERS (HQ) FILES WHICH HAVE BEEN PROCESSED, IT IS
6 NECESSARY IN VIEW OF THE IMPORTANCE OF THIS MATTER THAT WE
INSURE INSOFAR AS POSSIBLE ALL SUCH MATERIAL IS LOCATED. TO
4 THAT END, RECEIVING OFFICES ARE TO REVIEW THEIR WEATHERMAN ORGAN-
IZATION FILES AND FURNISH FBIHQ COPIES OF ALL COMMUNICATIONS
2 EMANATING FROM COOPERATIVE FOREIGN INTELLIGENCE SERVICES.

~~ADDITIONALLY, THOSE OFFICES WHICH WERE ORIGIN IN THE FOLLOWING~~

DO NOT TYPE PAST THIS LINE

DO NOT TYPE PAST THIS LINE

Greenberg/Gray-2570

2
~~CONFIDENTIAL~~

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

b6
b7c

PAGE

3

CONTINUATION SHEET

PAGE THREE DE HQ 0145 UNCLAS

(U) INVESTIGATIONS SHOULD REVIEW THOSE INDIVIDUAL FILES AND DO
 20 LIKEWISE. WE RECOGNIZE THAT THERE MAY BE SOME DUPLICATION BY
 18 OFFICES RECEIVING THE SAME COMMUNICATION. SUCH DUPLICATION WILL
 BE CORRECTED THROUGH A REVIEW AT FBIHQ. (S)

16 [REDACTED] - SE100-459398; CG176-1711;
 [REDACTED] - DE100-446593; CG176-1585; CG176-1588;
 14 CG176-2007; [REDACTED] - NY100-455596; WF0176-1991; [REDACTED]
 [REDACTED] - CG176-1641; NY100-438168; CG176-38; [REDACTED]
 12 NY100-455389; CG176-2107; CG88-50192; [REDACTED] -
 CG100-450008; CG88-50195; CG176-1637; CG176-264; DE176-2167
 10 [REDACTED] - SF100-454261; [REDACTED] -
 NY100-455977; NY100-455754; CG176-1765; [REDACTED] -
 8 MI100-474880; MI100-452959; MI88-56609; [REDACTED] -
 CG88-50450; MI100-446019; CV100-474867; CG176-1909; [REDACTED]
 6 [REDACTED] - NY100-454116; [REDACTED] - BS25-523645;
 NY88-51600; NY100-447736; [REDACTED] - CG105-175019;
 4 CG176-1636; NY14-2995; [REDACTED] - CG100-457945;
 BA25-622150; CG88-50397; CG176-1926; [REDACTED] -
 2 NY100-474530; [REDACTED] - BS100-467329; [REDACTED]
 [REDACTED] - BS100-477710; [REDACTED] - CG176-2004;

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Greenberg/Gray-2571

CONFIDENTIAL

FBI/DOJ

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

PAGE

4

CONTINUATION SHEET

PAGE FOUR DE HQ 0145 UNCLAS

~~CONFIDENTIAL~~

20 [REDACTED] - SF174-2184; NY100-452121; CG176-1918;
18 CG88-50403; NY100-451373; CG176-1984; [REDACTED] - NY100-477464;
[REDACTED] - NY25-584550; NY105-178669; WF0176-1340;
16 CG176-1700; MI44-43673; PG175-264; [REDACTED] -
DE100-461979; [REDACTED] - SF100-465959; [REDACTED]
14 [REDACTED] - WF0100-447957; CG176-254; CG176-1965;
NY100-452792; [REDACTED] - CG88-49004; DE100-451670;
12 CG176-1958; [REDACTED] - CG105-167915; PG176-1623;
CG176-229; CG176-2015; [REDACTED] - 100-457986;
10 [REDACTED] - NY100-449983; WF0176-2029; [REDACTED] -
NY100-451802.

(U) 8 IN ADDITION, RECEIVING OFFICES ARE REQUESTED TO SUTEL THE
NUMBER OF COOPERATIVE FOREIGN INTELLIGENCE SERVICE REPORTS BY
6 CLOSE OF BUSINESS SEPTEMBER 28, 1978, AND TO FURNISH COPIES OF
THOSE MATERIALS TO REACH FBIHQ BY SEPTEMBER 29, 1978. FORWARD
4 MATERIALS TO FBIHQ, ATTENTION: SA [REDACTED], ROOM 6888,
JEH BUILDING. (C)

2 BT

DO NOT TYPE MESSAGE BELOW THIS LINE

DO NOT TYPE PAST THIS LINE

b6
b7Cb6
b7C

Greenberg/Gray-2572

~~CONFIDENTIAL~~

FBI/DOJ

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

TO : Mr. Bassett *HMB*

DATE: 9-22-78

FROM : b6
b7CSUBJECT: U. S. vs. EDWARD S. MILLER,
W. MARK FEET, AND
L. PATRICK GRAY III

PURPOSE: To advise of receipt from the Department of certain Grand Jury transcripts concerning captioned matter.

DETAILS: By memorandum dated September 20, 1978 (copy attached), Barnett Skolnik forwarded to SA copies of the Grand Jury testimony of

These transcripts have been reviewed by the National Security Agency (NSA) and are currently being reviewed by the Central Intelligence Agency for classification purposes. The material in the transcripts has been classified up to TOP SECRET - COMINT by NSA. We are currently reviewing them for classification purposes. It should be noted that copies of these transcripts are in the possession of the defense counsel at this time and that a cursory review shows that the material contained therein emanating from NSA is, in many instances, the very same material that NSA is anticipating claiming privilege on in connection with the court ordered discovery in this matter.

The transcripts will be expeditiously reviewed for classification considerations by FBI personnel. Access to these transcripts will be restricted to personnel having a need to review same for that purpose. At the conclusion of this review, we will correspond with the Department, advising them of the classification level of the transcripts. Additionally, if warranted, we will advise them of any action we feel they should take concerning the defense counsel's possession of this material.

RECOMMENDATION: None. For information.

Enclosure

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - Mr. Colwell
- 1 - Mr. Cregar
- 1 - Mr. Mintz
- 1 - Mr. Bassett
- 1 -

b6
b7CAPPROVED: *[Signature]*Director
Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.Adm. Serv.
Crim. Inv.
Ident.
Intell.
LaboratoryLegal Coun.
Plan. & Insp.
Rec. Mgnt.
Tech. Servs.
Training
Public Affs. Off.

PVD: ddf Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

79 OCT 17 1978

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☐ Airtel

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ E F T O
☐ CLEAR

Date 9/25/78

TO: DIRECTOR, FBI
 FROM: *efm* SAC, SAN FRANCISCO (100-65526) (#14) (P)
 SUBJECT: U.S. vs. EDWARD S. MILLER,
 W. MARK FELT, AND L. PATRICK
 GRAY, III.
 BUDED: 9/29/78

RE FBIHQ teletype to San Francisco dated 9/20/78.
 SF teletype to FBIHQ dated 9/26/78.

In accordance with instructions furnished in referenced teletype, requested file search has been conducted in the San Francisco Division.

Attached is one copy of seven (7) serials which are communications emanating from Foreign Intelligence Services.

Be advised that referenced San Francisco teletype stated eight (8) serials would be forwarded. This number was erroneous.

ST-130

REC-79

62-118045-78

10-13
23 SEP 28 1978

② - Bureau (Enc. 7)
 1 - San Francisco

MWM/mwm

(3)

ENCLOSURE

Approved: _____

Transmitted _____ (Number) (Time)

Per _____

79 OCT 17 1978

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ Airtel

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ E F T O
☐ CLEAR

Date 9/27/78

TO: DIRECTOR, FBI
 (ATTN: SA ROOM 6888, JEH BUILDING)
 FROM: SAC, BUFFALO (62-2765) (RUC)

b6
 b7c

U.S. VERSUS
 EDWARD S. MILLER,
 W. MARK FELT AND
 L. PATRICK GRAY III
 BUDED 9/29/78

Re Bureau teletype to Buffalo, 9/20/78, and Buffalo teletype to Bureau, 9/27/78.

Enclosed for the Bureau are 36 serials which contain information received from cooperative foreign intelligence services.

In accordance with the request contained in referenced Bureau teletype, Buffalo reviewed the following Weatherman and Weatherman related files:

88-4426

WEATHFUG

100-22328

WEATHERMAN UNDERGROUND ORGANIZATION (WUO)

100-22328 Sub I

WEATHERMAN UNDERGROUND ORGANIZATION (LEGAL SUPPORT)

② - Bureau (Encs. - 36) (RM)
 1 - Buffalo

CPA:rrk
 (3)

ST-130
 ENCLOSURE

REC-79

62-118045-79

5 SEP 29 1978

b6
 b7c

Greenberg/Gray-2577

Approved: _____

Transmitted _____ (Number) _____ (Time)

Per _____

79 OCT 17 1978

BU 62-2765

100-22802

POSSIBLE WEATHERMAN COMMUNE
1831 San Andres
Santa Barbara, California

100-21803

SUSPECTED WEATHERMAN COMMUNE
3441-43 20th Street
San Francisco, California

For the information of the Bureau, in the Buffalo review of the above files, Buffalo did not conduct a page by page review of the various lengthy reports submitted by Chicago, which is Office of Origin on the Weatherman Underground Organization. All other serials in the above files were carefully reviewed for any information received from any foreign intelligence service. All of the serials being submitted by Buffalo were contained in the WEATHFUG file (88-4426).

Greenberg/Gray-2578

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ Airtel

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ E F T O
☐ CLEAR

Date 9/27/78

TO: DIRECTOR, FBI
 (ATTN: ROOM 6888,
 JEH BUILDING)

b6
 b7C

FROM: SAC, CLEVELAND (197-14) (RUC)

RE: U.S. V. EDWARD S. MILLER,
 W. MARK FELT AND
 L. PATRICK GRAY, III
 BUDED 9/29/78

Re Bureau teletype, 9/20/78.

Enclosed for the Bureau are two copies of a teletype from Acting Director, FBI to SAC, Cincinnati, 7/23/72; two copies of Bureau routing slip dated 8/11/67, and attached material from Legat, Ottawa and Bureau routing slip dated 9/10/68 with enclosures from Legat, Bonn and two copies of Bureau routing slip dated 7/6/72, with enclosures from Legat, Ottawa

b7D

A review of Cleveland file 100-27031 reveals the above-mentioned enclosures as the only reports from cooperative foreign intelligence services contained in that file.

A review of Cleveland file 4-16, which is the main file concerning Bureau file 100-474867, reveals no information contained therein from cooperative foreign intelligence services.

b6
 b7C

3 - Bureau (Enc. 8) (RM)
 1 - Cleveland

EMK:pla
 (4)

ENCLOSURE

REC-79

62-118045-80

9 OCT 2 1978



b6
 b7C

Greenberg/Gray-2579

Approved: _____

Transmitted _____

(Number)

(Time)

Per _____

79 OCT 17 1978

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 9/27/78

TO: DIRECTOR, FBI
 Attention: SA
 Room 6888, JEH Building

b6
 b7C

FROM: SAC, BUTTE (197-11) (RUC)

SUBJECT: U. S. Vs. EDWARD S. MILLER,
 W. MARK FELT³ and
 L. PATRICK GRAY, III
 Buded: 9/29/78

Re Bureau teletype to New York, 9/20/78; and
 Butte teletype to Bureau, 9/27/78.

Enclosed for the Bureau are four foreign intelligence reports which were located in Butte file #100-8861
 Bufile #100-454662, in case captioned ""

b6
 b7C

Above reports were forwarded to Butte by FBIHQ
 and were furnished by Legat, Ottawa.

The above are all foreign intelligence reports
 in Butte Weatherman Organization files and files of individuals set forth in Bureau teletype to New York, 9/20/78.

ST-130

REC-79

62-118045-81

OCT 13 1978

② - Bureau (Encs. 4) (AM)
 1 - Butte
 LDW/ddp
 (3)

b6
 b7C

Approved: LEB/W

Transmitted _____

(Number)

(Time)

Per _____

FBI/DC

79 OCT 17 1978

F B I

Date: 9/28/78

Transmit the following in _____
(Type in plaintext or code)Via AIRTEL _____
(Precedence)

TO: DIRECTOR, FBI
FROM: SAC, DETROIT (44-2008) RUC
SUBJECT: US VS. EDWARD S. MILLER,
W. MARK FELT, AND L.
PATRICK GRAY, III.
BUDED 9/29/78

Re Bureau tel, 9/20/78.

Enclosed are 47 pages of documents containing
information furnished by cooperative Foreign Intelligence
Services.

Project review of Detroit files concerning Weatherman,

[redacted] located enclosed
documents which represent all data contained therein furnished
by cooperative Foreign Intelligence Services.

- ② - Bureau (Enc.-47) (RM)
1 - Detroit
JHB/db
(3)

ENCLOSURE**ST-130 REC-79**

*1cc destroyed
excl. retained
Rm 6888
jmk*

62-118045-82

9 OCT 13 1978

Greenberg/Gray-2581

SECRET MATERIAL ATTACHEDApproved: _____ Sent _____ M Per _____
Special Agent in Charge

79 OCT 17 1978

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ Airtel

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ E F T O
☐ CLEAR

Date 9/28/78

TO: DIRECTOR, FBI
 (ATTN: ROOM 6888,
 JEH BUILDING)

b6
 b7C

FROM: SAC, CHICAGO (197-25) (SQUAD 15)

SUBJECT: U.S. vs. EDWARD S. MILLER, ⁰
 W. MARK FELT AND L. PATRICK GRAY, III,
 BUDED 9/29/78

Re Bureau teletype dated 9/20/78.

Per instructions in referenced teletype are enclosed 1,020 serials which reflect information emanating from cooperative foreign intelligence services during the course of the overall investigation of the Weather Underground Organization (WUO) and during investigations on specific individuals as outlined in referenced teletype.

Chicago's survey included reviews of the following overall WUO related files:

Chicago file 176-1677, entitled "WEATHFUG" and subfiles "A" - "L".

Chicago file 100-40903, entitled "WEATHER UNDERGROUND ORGANIZATION", and subfiles "A" - "Q".

Chicago file 176-1312, entitled ET AL, ANTI-RIOT", (the forerunner to Chicago file 176-1677) and subfiles "A" - "G" **ST-130 REC-79** 62-118045-83

b6
 b7C

- NO ENCL. RECEIVED**
- ③ - Bureau (Encs. 1,020 serials contained in one cardboard box)
 1 - Package Copy
 1 - Chicago
 WED/mtd
 (4)
- 2cc's destroyed
 encl. retained
 RM 6888
 JEH*

9 OCT 2 1978

Approved: *SEO/AM*

Transmitted

(Number)

(Time)

b6
 b7C

79 OCT 17 1978

CG 197-25

Chicago file 100-55510, entitled "PRAIRIE FIRE ORGANIZING COMMITTEE."

Chicago's survey also included reviews of the following files on individuals mentioned in referenced Bureau teletype:

[redacted] Chicago files 88-15375, 100-48482, 176-1398.

[redacted], Chicago file 100-51125.

[redacted] Chicago files 100-49015 and 88-16166.

[redacted] Chicago files 100-47756, 88-13505, 176-1627, 174-557.

[redacted] Chicago file 100-55993.

[redacted] Chicago file 100-55468.

[redacted] Chicago files 190-13, 147-552, 100-48182, 176-1443 and 174-625.

[redacted] Chicago files 105-26447 and 176-1358.

[redacted] Chicago files 100-42603, 176-1642, 176-104, 174-567.

[redacted] Chicago files 100-44426, 4-42, 4-41, 88-13518, 176-1694, 174-562.

[redacted] Chicago file 100-48104.

[redacted] Chicago files 174-555, 100-46813, 176-1386.

[redacted] Chicago files 88-13508, 174-778, and 174-550.

CG 197-25

[redacted] Chicago files 176-1300,
100-46445, 174-547.

[redacted] Chicago file 100-53119.

[redacted] Chicago files 176-1665
and 100-46371.

[redacted] Chicago file 100-51235.

[redacted], Chicago files
100-48211 and 176-1658.

[redacted] Chicago files 100-50202
and 176-1429.

[redacted] Chicago files 100-50265
and 176-1462.

b6
b7C

[redacted] Chicago files 176-8 and 100-47977.

[redacted] Chicago files 176-1103
and 100-45568.

[redacted] Chicago files 176-1317 and
100-45686.

[redacted] Chicago files 176-1031
and 100-44398.

[redacted] Chicago files 176-1085,
100-44240 and 174-545.

[redacted] Chicago files 100-47582,
176-1664, and 174-565.

Of the aforementioned individuals, Chicago was
at one time or another "Office of Origin" in one or more
of the abovementioned files except on [redacted]

b6
b7C

CG 197-25

Chicago was unable to locate any files on [REDACTED]

[REDACTED] The only file on [REDACTED] was Chicago file 62-7540 which concerned a law suit.

b6
b7C

Chicago file 100-47014 on [REDACTED] was not reviewed as it was sent to FBIHQ in connection with a law suit by the American Civil Liberties Union (ACLU) on 6/27/78.

b6
b7C

Chicago wishes to advise the Bureau that there are many other WUO related files which would logically show foreign influence. Examples would include investigative files on Weatherman fugitive [REDACTED] and former Weatherman fugitive [REDACTED]. Chicago did not review these per Bureau instructions.

b6
b7C

Chicago is aware that in cases such as the captioned matter, governmental cost is sometimes an issue in courtroom pleadings. In view of this, Chicago which afforded the aforementioned survey priority attention, utilized approximately 500 Special Agent man hours to the removing of serials from the appropriate files and utilized approximately 100 clerical hours to support this project. Chicago estimates that over 300 additional clerical hours will be necessary to replace the serials in these files and to return these files to the appropriate locations in the office.

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ E F T O
☐ CLEAR

AIR MAIL

Date 9/28/78

TO: DIRECTOR, FBI
 ATTN: SA [REDACTED]
 ROOM 6888, JEH BUILDING

FROM: SAC, MILWAUKEE (197-10) (RUC)

SUBJECT: U.S. VS.
 EDWARD S. MILLER, W. MARK FELT,
 AND L. PATRICK GRAY, III
 BUDED: 9/29/78

b6
 b7C

Re Bureau teletype to Milwaukee dated 9/20/78; Milwaukee teletype to Bureau dated 9/28/78.

Enclosed for the Bureau are two copies each of two separate communications originating from [REDACTED] dated 7/28/70 and 8/26/71.

b7D

The document dated 7/28/70 was obtained from MI 100-16651-149 and the document dated 8/26/71 was obtained from MI 176-92-186. Both files pertain to the Weatherman investigation.

As previously reported in re Milwaukee teletype, no Foreign Intelligence Service communications were located for the following three individuals as requested in re Bureau teletype:

b6
 b7C

No further action is ^{ST-130}being continued re this matter, UACB.

3 - Bureau (Enc. 4) (RM)
 1 - Milwaukee

GAP/djz
 (4)

REC-79

62-118045-84
SECRET MATERIAL ATTACHED

23 OCT 13 1978

b6
 b7C

Approved: _____

Transmitted _____

(Number)

(Time)

Per _____

FBI/DOJ

79 OCT 17 1978

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☐ AIRTEL

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ E F T O
☐ CLEAR

Date 9/28/78

TO : DIRECTOR, FBI
 FROM : JOP/ *as* ATTN: SA [REDACTED] RM. 6888, JEH BLDG) b6 b7C
 ACTING SAC, SEATTLE (62-3122)(RUC)
 SUBJECT: U.S. Vs EDWARD MILLER,
 W. MARK FELT AND
 L. PATRICK GRAY, III
 BUDED 9/29/78

Re Seattle teletype to the Bureau dated 9/28/78.

Enclosed for the Bureau is one packet containing 20 communications that have emanated from [REDACTED] b7D

Above communications were located at Seattle through review of Weatherman (SEE 100-31946): WEATHFUG (SE 176-35); WEATHAPS (SE 100-29604); and [REDACTED] (SE 100-30197) files. *9*

No communications from any cooperative foreign intelligence services other than [REDACTED] were located in SE files. No additional investigation remains at Seattle. b7D

(2) - Bureau (Encl 20 ENCLOSURE)
 1 - Seattle
 TRM:arm
 (3)

*1cc destroyed
 encls retained
 rm 6888
 jwp*

REC-79

62-118045-85

9 OCT 13 1978

Greenberg/Gray-2587



Approved: 79 OCT 17 1978

Transmitted (Number) (Time)

Per

FBI/DOJ

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date September 29, 1978

TO: DIRECTOR, FBI (ATTN: SA [redacted] ROOM 6888)

b6
b7C

FROM: SAC, ALBANY (197-17)

SUBJECT: UNITED STATES VS. EDWARD S. MILLER, W. MARK FELT,
 AND L. PATRICK GRAY, III
 BUDED SEPTEMBER 29, 1978.

Re Bureau teletype to Albany, 9/20/78; and Albany teletype to Bureau, 9/28/78.

Enclosed for the Bureau are two copies each of five reports emanating from cooperative Foreign Intelligence Services listed as follows:

- (1) Letter dated 9/3/70 from Ottawa, Canada.
- (2) [redacted] dated 8/19/71.
- (3) [redacted] dated 10/18/71.
- (4) Letter dated 9/13/72 from Ottawa, Canada, with attached appendices A-F.
- (5) Letter dated 5/25/70 from Ottawa, Canada.

b7D

ENCLOSURE

3-Bureau (Enclosures)
 1-Albany
 MWO:jvd
 (4)

ST-130

REC-79

62-118045-86

16 OCT 13 1978

Greenberg/Gray-2588

b6
b7C

Approved: _____

Transmitted _____

(Number)

(Time)

Per _____

FBI/DOJ

79 OCT 17 1978

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ Airtel

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ E F T O
☐ CLEAR

Date 10/6/78

TO: DIRECTOR, FBI
 ATTN: SA
 RM 6888, JEH BLDG

b6
 b7C

FROM *IDA*
km SAC, SEATTLE (62-3122)(RUC)

SUBJECT: U. S. vs EDWARD MILLER,
 W. MARK FELT AND
 L. PATRICK GRAY, III

Re Seattle TT to Director, 10/6/78.

Enclosed for the Bureau is one packet containing
 189 communications reflecting information received from
 cooperative foreign intelligence services.

Above communications were located at Seattle
 through review of WEATHERMAN (SE 100-31946); WEATHFUG
 (SE 176-35); WEATHAPS (SE 100-29604); and
 (SE 100-30197) files.

b6
 b7C

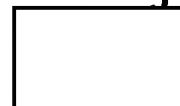
No investigation remains at Seattle.

- ② - Bureau (Enc 1)
 1 - Seattle
 TRM:kn
 (3)

ST-130
REC-79
62-118045-87
1cc destroyed
encls retained
rm 6888
frank

2 OCT 13 1978

Greenberg/Gray-2589



b6
 b7C

Approved: _____

Transmitted _____

(Number)

(Time)

Per _____

79 OCT 17 1978

Mr. Francis J. Martin
Criminal Division

10-10-78

FEDERAL GOVERNMENT

ST
C
[redacted]
Federal Bureau of Investigation

b6
b7C

U. S. vs. L. PATRICK GRAY III, ET AL

Pursuant to your request, the Grand Jury transcripts

[redacted]
[redacted] were reviewed by the FBI for classification purposes. At the request of [redacted] these transcripts were furnished to his office on October 6, 1978, and appropriate receipts were obtained.

b3
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The portions of the transcripts classifiable by the FBI are marked in red pencil. No attempt was made to indicate areas where information should be redacted to protect sources, etc.

SAs [redacted] reviewed the material for purposes of classification. No other Bureau personnel has had access to these transcripts. *gp*

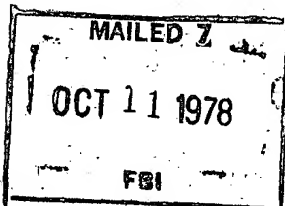
b6
b7C

1 - Mr. Bassett

1 - [redacted]

b6
b7C

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Serv. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____



ST-130

REC-47

62-118045-88

20 OCT 12 1978

PVD:ddf
(5)

Greenberg/Gray-2590

66 OCT 24 1978

MAIL ROOM ☐

FBI/DOJ

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ Airtel

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ E F T O
☐ CLEAR

Date 10/11/78

TO: DIRECTOR, FBI

FROM: SAC, SAN ANTONIO (1-348)

U.S. vs. L. PATRICK GRAY, III;
 ET AL
 U.S. DISTRICT COURT ACTION 78-000179
 DISTRICT OF COLUMBIA

b6
 b7c

For the information of the Bureau, Former SAC CLARK D. ANDERSON, San Antonio, Texas, advised on 10/11/78, that he had received a subpoena from Assistant U. S. Attorneys (AUSA's) FRANCIS J. MARTIN and BRACKENRIDGE WILLCOX, Room 606, 315th Ninth Street, N.W., Washington, D. C., for his appearance for trial on 10/23/78. He stated that there was an attachment to the subpoena containing instructions that the trial was to commence 10/23/78, but that his testimony would not be needed on that date, but he was to consider the subpoena as "continuing." He was requested to telephonically contact the abovementioned AUSA's as to his whereabouts so that he might be immediately available.

Former SAC ANDERSON further advised that he had been previously interviewed by Mr. WILLCOX regarding meetings of the SAC's with then Director GRAY and Mr. MARK FELT soon after Mr. GRAY had been designated Acting Director of the FBI. Mr. ANDERSON stated that he did not deem any information which he might have as pertinent to the charges in the instant prosecution; however, he wished to make this notification of subpoena a matter of record with FBIHQ.

This communication is furnished for information.

2 - Bureau
 1 - San Antonio
 ALL:al
 (3)

ST-120

REC-9

62-118045-89

OCT 14 1978

Approved: 

Transmitted _____

(Number)

(Time)


Per 

58 OCT 24 1978

Mr. Breckinridge L. Willcox
Criminal Division

10-11-78

FEDERAL GOVERNMENT


Federal Bureau of Investigation

b6
b7C

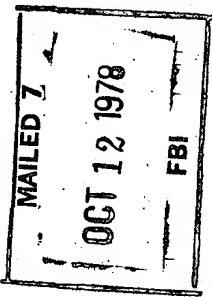
U. S. vs. L. PATRICK GRAY III, ET AL

Reference is made to your letter of October 4, 1978. The following is a list of current addresses of former agents as reflected in Bureau files:



b6
b7C

gpc



Mohr, Paul J.
2770 North Placita Tuxpan
Tucson, Arizona 85715

REC-80

62-118045-911

23 OCT 16 1978

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
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Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

1 - Mr. Bassett - *deleted*

1 - 

b6
b7C

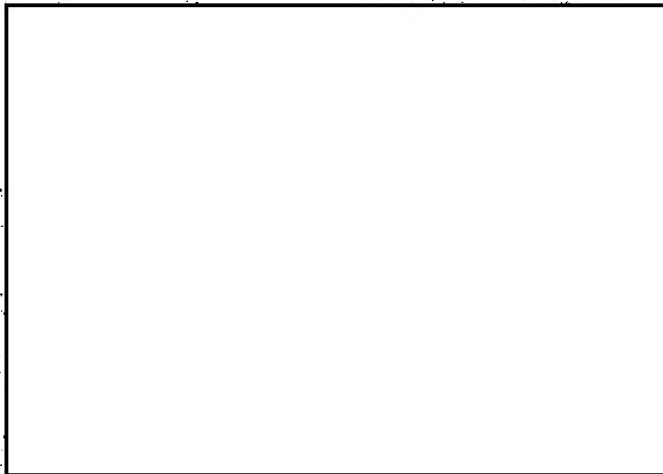
PVD:ddf
(5)

Greenberg/Gray-2593

NOV 17 1978
MAIL ROOM ☐

~~PERS~~ REC UNIT FBI/DOJ

Mr. Breckinridge L. Willcox



b6
b7C

Santoiana, J. F., Jr.
11009 Carrollwood Drive
Tampa, Florida 33618

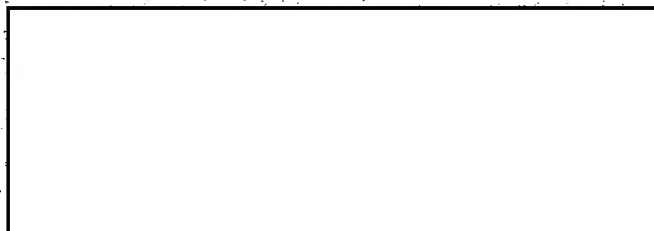
Shanklin, J. Gordon
6023 Del Norte
Dallas, Texas 75225

or

%Johnson, Guthrie, Billings, Nash and Shanklin
1410 Republic National Bank Building
Dallas, Texas 75201

Sullivan, William A.
19243 Castlebay Lane
Northridge, California 91324

Walters, Leonard M.
1303 MacBeth Street
McLean, Virginia 22101



b6
b7C

Young, Paul C.
7765 Palmyra Drive
Fair Oaks, California 95628

Ms. Mary C. Lawton
Deputy Assistant Attorney General
Office of Legal Counsel

October 5, 1978

Director, FBI

FEDERAL GOVERNMENT

U.S. vs L. PATRICK GRAY III, ET AL

The FBI has consistently expressed concern regarding the handling of National security information in this matter, as well as in the investigation which lead to the issuance of indictments of L. Patrick Gray III and other former Bureau officials. As early as July 26, 1976, by my memorandum to the Assistant Attorney General, Civil Rights Division, this concern was expressed.

It is realized that during the Department's investigation into the surreptitious entry matter, documents were furnished, generally, without markings for classification. As a result, Departmental personnel were in possession of extremely sensitive material without being placed on notice as to its sensitivity. The first opportunity by the FBI for review of the material for classification purposes occurred in connection with the FBI's compliance with court ordered discovery in the U.S. vs Kearney case. At that time, we advised the Special Counsel in charge of prosecution of this matter, Barnett D. Skolnick, by our memorandum dated February 10, 1978, that he was in possession of a large volume of highly sensitive material which had not been reviewed and marked where necessary for classification purposes and the material should be handled accordingly. Subsequently, in complying with an order of the court under Rule 16, Federal Rules of Criminal Procedure, arising out of captioned case, defense counsel were furnished highly sensitive material classifiable up to a Top Secret-Communications Intelligence level. This material was furnished to defense counsel without benefit of prior review and classification markings by the Bureau. It was necessary, at that time, for the sensitive materials in the possession of defense counsel to be retrieved. Representatives of the Bureau met with you and other representatives of the Department in April

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Dep. AD Inv. _____

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Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

NOTE: Based on conference with Director 10/5/78. In attendance at conference were Mary Lawton, Assistant Directors' Bassett and Mintz, Deputy Associate Director McDermott, SA [redacted] and Special Assistant to the Director Adrian Steel.

1 - Mr. Steel
1 - Mr. McDermott

1 - Mr. Bassett
1 - [redacted]

b6
b7C

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b7C

(CONTINUED - OVER)

FBI/DOJ

9 OCT 27 1978

62-118045

Delivered to Mary Lawton by [redacted] Director 10-5-X [redacted]

and [redacted] [redacted]

Ms. Mary C. Lawton

of 1978 in connection with this matter and raised a question as to whether the grand jury transcripts containing the results of grand jury appearances by current and former Bureau personnel might present similar problems. At that time, the Bureau requested that these transcripts be subject to Bureau review as well as review by the National Security Agency (NSA) and the Central Intelligence Agency (CIA). We were furnished these transcripts on September 20, 1978, for our review. It was immediately obvious that highly sensitive material was contained in these transcripts which are now in the possession of defense counsel. In fact, NSA, which had already reviewed these transcripts, marked a significant portion Top Secret-COMINT. This concern was communicated to Department Trial Attorney Frank Martin as well as yourself on that date. We have now completed our review of this material and are greatly concerned at the potential for possible compromise and the effect it could have on the security interests of this country. Since some of the material is classified Top Secret-COMINT, a review is necessary to determine the applicability of Title 18, U.S. Code, Section 793. This statute prohibits the release of communications intelligence to unauthorized recipient as well as possession by an unauthorized individual. It is our understanding that corrective action has not been taken to date. Since there appears to be improper release of classified material, the provisions of Title 28, Code of Federal Regulations, Section 17.55, relating to the loss or compromise of classified information, must be complied with. Also, consideration must be given concerning the notification requirements of Executive Order 12036. This memorandum is intended to notify you of the aforementioned problems and suggest that this matter be reviewed for action necessary for compliance with the aforementioned statute, Code of Federal Regulations Provisions, and Executive Order.

We also note that it is essential that both CIA and NSA be advised that the grand jury transcripts have been furnished to and continue to be in the possession of defense counsel. It is our understanding that not all defense counsel in this matter are cleared for possession of this material nor do they have the facilities necessary for the storage of such material. While the primary thrust of this memorandum concerns compartmented information, we are very concerned at the defense counsel's having possession of materials which could lead to the identification of FBI sources as well as disclosure of similarly sensitive FBI operations.

- 1 - Mr. Robert Keuch
Deputy Assistant Attorney General
Criminal Division

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**Memorandum**

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
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 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

DATE: 10/16/78

TO : Mr. Bassett *HMB*
 FROM : b6
 b7C

SUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL

PURPOSE: The purpose of this memorandum is to set forth the results of our conferences with the Department concerning the possible mishandling of classified material by Departmental attorneys in this matter.

DETAILS: On 10-5-78, the Director, accompanied by Special Assistant to the Director Adrian Steel, Jr., and SA met with Deputy Attorney General Benjamin Civiletti, his assistants, Charles Ruff and Paul Michel, and Deputy Assistant Attorney General Mary C. Lawton to discuss the contents of the Director's memorandum to Ms. Lawton dated 10-5-78. This memorandum notified the Department that defense counsel were in possession of highly sensitive material classifiable up to the TOP SECRET - COMINT level and that to our knowledge they were furnished this material without having proper clearances. It was pointed out that we had previously expressed concern as to the handling of this material by the Department. This meeting was concluded with Mr. Civiletti suggesting that a second meeting be held on 10-6-78 to discuss means of correcting the situation and to allow the Department to take the necessary steps required by Title 28, Code of Federal Regulations (CFR), Section 17.55, which relates to the loss in compromise of classified information and, additionally, to consider the applicability of Title 18, United States Code (USC), Section 793, which prohibits the release of communications intelligence to unauthorized recipients as well as possession by an unauthorized individual.

Enclosure

- 1 - Mr. Adams
 1 - Mr. McDermott
 1 - Mr. Colwell
 1 - Mr. Cregar
 1 - Mr. Mintz
 1 - Mr. Steel
 1 - Mr. Bassett
 1 - Mr. Ryan
 1 -

REC-126

62-118045
62-118045-93K1

(CONTINUED - OVER)

23 DEC 13 1978

Daly to Bassett Memo
Re: U. S. vs. L. Patrick Gray III, et al

On 10-6-78, SAs [redacted] and Special Assistant to the Director Adrian Steel, Jr., met with Charles Ruff, Mary C. Lawton, Paul Michel, Deputy Assistant Attorney General Robert Keuch, [redacted] of the Department's security office, and trial attorneys in captioned matter, Barnet Skolnik and Frank Martin. At this meeting it was decided that the Department's security officer would take the necessary action under Title 28, CFR, Section 17.55 which would include an assessment as to damage resulting from the improper handling of the material as well as a submission of a report to the Department Review Committee for action it may deem necessary. Additionally, it was decided the Department would notify the Central Intelligence Agency and the National Security Agency of the compromise of its material by the Department. Additionally, steps would be taken by the Department to obtain the return of the Grand Jury transcripts which contain the sensitive material in question. This attempt was to be accomplished through contacting defense attorneys who had possession of these transcripts and arranging for a meeting to be held on 10-10-78. Additionally, it was decided that the Civil Rights Division of the Department would review the actions of Departmental attorneys to determine whether a violation of Title 18, USC, Section 793, occurred.

The meeting with the defense attorneys was held on 10-10-78 as scheduled. The defense attorneys have thus far refused to return the transcripts. They have not submitted to the necessary procedures to obtain proper clearance for possession of such material. We were advised by Frank Martin, trial attorney, on 10-12-78, that the Department has written letters to the defense counsel concerning this matter; and as yet, the matter has not been resolved. The material continues to be in the possession of the defense counsel and, of course, is not stored in accordance with Governmental regulations. This particular aspect is being pursued by the Bureau's security officer, Section Chief David Ryan, through his counterpart in the Department. We have also been furnished by the Department a memorandum dated 10-6-78 from Mary C. Lawton (copy attached) to the Director, enclosing her notification to the Departmental security officers to take the necessary steps to comply with Title 28, CFR, Section 17.55. Ms. Lawton additionally questions the need for notification to the Intelligence Oversight Board pursuant to the provisions of Executive Order 12036 concerning

[] to Bassett Memo
Re: U. S. vs. L. Patrick Gray III, et al

the mishandling of these materials on the basis that the Department is not an agency of the intelligence community as identified by the Order and also raised the question as to whether the mishandling of classified material is the kind of activity covered by the Order. This particular opinion will be the subject of a separate memorandum since there are provisions in the Executive Order addressing the mishandling of classified material and the fact that the FBI is covered by the Order, raising a question as to whether the FBI might not be obligated to report this to the Intelligence Oversight Board.

On 10-12-78, Chief Judge, United States District Court, Washington, D. C., William Bryant held a hearing to determine whether a requested postponement of the trial date in this matter from 10-23-78 should be granted. A new trial date has been set by Judge Bryant for 1-23-79. Additionally, Judge Bryant discussed problems encountered by the defense in gaining access to sensitive foreign intelligence information. The Government attorneys represented that this problem could be worked out without court involvement. The defense attorneys were not optimistic at arriving at a solution. Judge Bryant asked that he be kept advised on a timely basis on this problem so that, if necessary, the court would become involved in seeking a solution.

RECOMMENDATION: None. For information.

AS
wls
APPROVED: [Signature]
Director [Signature]
Assoc. Dir. [Signature]
Dep. AD-Adm. [Signature]
Dep. AD-Inv. [Signature]
Adm. Serv. [Signature]
Crim. Inv. [Signature]
Ident. [Signature]
Intell. [Signature]
Lab. [Signature]
Legal Coun. [Signature]
Plan. & Insp. [Signature]
Rec. Mgmt. [Signature]
Tech. Servs. [Signature]
Training [Signature]
Public Affs. Off. [Signature]

Greenberg/Gray-2611

UNITED STATES GOVERNMENT

Memorandum

TO : ¹⁰
Federal Bureau of Investigation

b6 Per FBI
b7C

DATE: September 27, 1978

FROM : Francis J. Martin
Criminal Division

SUBJECT: United States v. Gray, et al - Classification Review of
Jencks Material

L. Patrick

As noted in Mr. Skolnik's memorandum to you of September 20, 1978, it will be necessary for the Bureau to conduct a classification review of grand jury transcripts that will be made available to defense counsel as Jencks material in the Gray case. This review is to be conducted in accordance with the provisions of Rule 6(e), Federal Rules of Criminal Procedure, as outlined in Mr. Skolnik's memorandum. Also, precaution should be taken to insure that these grand jury materials are not inadvertently made available to those personnel handling the pending administrative proceedings. Finally, these transcripts are not being forwarded to the CIA or NSA at this time. Accordingly, the Bureau should note any passages that require referral to these agencies for classification. As to any such passages that may require S.I. classification the Bureau should provide a copy of the page(s) in question appropriately redacted such that the redacted page(s) would not require S.I. classification.

The grand jury transcripts transmitted herewith are as follows:



EX-125

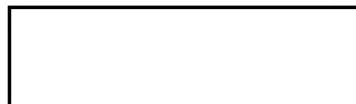
EC 20

*Delivered 12/12/78
62-118045-9384*



(2 transcripts)

11 MAR 13 1979



(3 transcripts)



(2 transcripts)



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b6 Per FBI
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7 9 16 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

[REDACTED]

(2 transcripts)

[REDACTED]

r.

[REDACTED]

(5 transcripts)

[REDACTED]

[REDACTED]

(2 transcripts)

b3 Per FBI
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Mr. Harry Fair, Director of Security
Office of Management and Finance
Department of Justice

October 13, 1978

David Ryan
Security Officer, FBI

- 1 - Mr. McDermott
- 1 - Mr. Bassett
- 1 - [REDACTED]
- 1 - Mr. Gerblich
- 1 - Mr. Ryan

b6
b7C

**SAFEGUARDING OF NATIONAL SECURITY
INFORMATION AND MATERIAL**

Reference is made to the memorandum of Deputy Attorney General Mary C. Lawton, Office of Legal Counsel, dated October 6, 1978, captioned "Unauthorized Disclosure of Classified Information," to the security officers of the Criminal Division and the Civil Rights Division. A copy of this memorandum and its attachments were furnished to the Department's Security Office and the Department Review Committee as required by Title 28, Code of Federal Regulations, Part 17.55.

This is to confirm my telephone conversation with [REDACTED] Security Specialist in the Department Security Office, on October 13, 1978, relating to the unauthorized disclosure and procedures for safeguarding the classified and sensitive compartmented material which has been furnished to the defense counsel in the matter of U.S. v. L. Patrick Gray, Et Al. In brief, I would appreciate your insuring that the information provided to the defense counsel in violation of regulations is promptly returned to the Department's custody, and that other classified information provided to defense counsel is afforded the proper safeguarding requirements while in the custody of the defense counsel. I would also appreciate your keeping me advised.

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I appreciate the prompt attention you have afforded this matter and you may be assured of my cooperation. 62-118045-

- 1 - Mr. Leon Ulman, Chairman
Department Review Committee
Department of Justice

NOT RECORDED

191 OCT 25 1978

DR:jml (10)

1 - 62-116065

1 - U.S. v. Gray, Et Al.

NOTE: [REDACTED] advised the Department is seeking to recover from defense counsel compartmented and "Top Secret" classified material which was disseminated by the Criminal Division Task Force to defense attorneys in the matter U.S. v. Gray, Et Al. He said when this material is retrieved, it will be sanitized and returned to the attorneys in excised form. The attorneys will also be briefed for access to compartmented information according to [REDACTED] but this is creating some difficulty as several of the attorneys have indicated refusal to abide by regulations regarding the handling of compartmented material. [REDACTED] stated that the Department has already initiated procedures to insure the defense attorneys have proper storage facilities for the material classified up to "Top Secret." Material in the compartmented area will necessarily be maintained in the approved Department facility.

b6
b7C

61 NOV 6 1978

ORIGINAL FILED IN 62-116045-14

Mr. Francis J. Martin
Criminal Division

10-19-78

FEDERAL GOVERNMENT

SP
[Redacted]
Federal Bureau of Investigation

b6
b7C

U. S. vs. L. PATRICK GRAY III, ET AL

In accordance with your memorandum of September 25, 1978, materials seized from the various FBI Offices in August 1976 and FBI Headquarters have been made available for review by representatives of the defense attorneys. This review has been completed. Of the requested 337 folders, 103 were made available for review. An additional 88 folders had previously been furnished them in connection with other aspects of this discovery. The reason for the discrepancy between the requested amount and the amount made available was prompted by the fact certain folders were unavailable for review because their location was unknown and because, in some instances, the contents of the folders were outside the scope of discovery or they contained highly sensitive material which could not be made available. They did not ask for and, therefore, were not furnished copies of documents contained in these folders. (1)

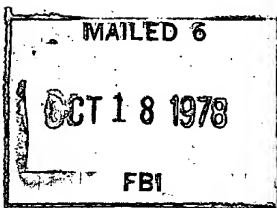
1 - Mr. Bassett
1 - [Redacted]

b6
b7C

REC-126

62-118045-94

ore



6 OCT 31 1978

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
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Public Affs. Off. _____
Telephone Rm. _____
Director _____

PVD:ddf
(5)

Greenberg/Gray-2627

84 OCT 31 1978
MAIL ROOM ☐

FBI/DOJ

62-118045-95

ENCLOSURE

Specific Recommendations from 9/10-11/70
Conference

Airtel 10/1/70 advised field to use term "Extremist" rather than "Weatherman" for terrorists. Field suggested this clarifies matter for administrative purposes, dissemination, etc. (attached)

Airtel 10/5/70 to Baltimore, LA, and SD. Informants who go to Cuba to be instructed to advise fellow V.B. members of attempted interview by FBI. (attached)

Memo and SAC letter 9/30/70 authorized Special Agents in Charge to discuss New Left Extremism at closed conferences with police officials. (attached)

R/S 9/21/70 to all field offices to allow field to reproduce copies of Bureau airtel re Student Agitation for Resident Agencies. (attached)

Memo 9/30/70 approved rental of old foreign & domestic autos by field for handling New Left investigations in "hippie" areas by CG, DE, LA, MI, NY, SF, and SE.

In addition following handled on individual basis and are being emphasized.

1. Movement lawyers - Stang in Chicago - Law Commune in New York.

2. New Left newspapers which print Weatherman statements "Quicksilver Times", WFO "Gus", Detroit "Berkeley Tribe", SF.

3. Concentration on antiwar movement activists Davis, Dellinger, etc., and all Key Activists.

4. Counterintelligence suggestions are being encouraged from field no matter how far out.

REFERENCE, 9/10-11/70,
MOVEMENT

be reconsidered inasmuch as-prone New Left

d as targets for
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especially those oriented
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communications center.
"Rat," the "Kaleidoscope"
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by Bureau Agents since
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Denver Office should
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Police Schools and to
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be forwarded to Resident
otter's recent airtel
concerning student

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chniques which include

SPECIFIC RECOMMENDATIONS FROM CONFERENCE, 9/10-11/70,
CONCERNING NEW LEFT MOVEMENT

*most
checked*
That the use of the term "Weatherman" be reconsidered inasmuch as it is not applicable to all violence-prone New Left militants.

*Book
under
investigation*
That "movement" attorneys be considered as targets for intensive investigation due to their close relationship with New Left militants.

That New Left underground newspapers, especially those oriented towards Weatherman philosophy, be afforded intensive investigation due to their apparent role as a communications center. For example, the New York publication, "Rat," the "Kaleidoscope" were involved with major bombings in New York and Madison, Wisconsin. In addition, such newspapers as the "Berkeley Tribe," the Detroit "Argus" and the Washington, D. C. "Quick Silver Times," have in the past and continue to publicize Weatherman threats. *As presented to Department*

*Don
to select
offices w/ informants there*
Insure that all informants who go to Cuba with the Venceremos Brigade be afforded a phony interview by Bureau Agents since all members of the VB are to be interviewed upon their return to this country.

*off
11/11*
Denver Agent Boyd Adsit reported that the Alcohol and Tobacco Tax Division of the Treasury Department appears to have some sort of an interview program of VB returnees for violations of the Federal Firearms statutes. The Denver Office should be instructed to obtain information concerning investigations by the ATTD to insure that Bureau interests are protected.

*Don
action*
It was recommended that there be Bureau-approved speakers in the field on the New Left Movement for Police Schools and to include information concerning nonstudent militants.

*off
11/11*
That instructive airtels concerning organizations contain Bureau permission to Xerox copies to be forwarded to Resident Agents who handle New Left matters (Cotter's recent airtel concerning submission of information concerning student agitation, etc.).

Don
It was suggested that the Bureau consider the use, on an individual basis, of investigative techniques which include

the use of old automobiles, Volkswagens, and motor scooters in New Left Hippie-type residential areas.

That the field be directed to develop sources who would be able to advise of the unusual purchase of such materials as explosives, fuse material, and ammonium nitrate (from fertilizer plants).

That the field be instructed to obtain more specific details on New Left individuals, especially where there is an indication of violence, and that these investigations must be exhaustive.

It was recommended that some provision be made for the use of informants on a full-time basis to enter violence-oriented communes as regular members.

It was recommended by attendees that Agents investigating New Left militants insure they establish tight liaison with local and Federal law enforcement agencies who are also investigating New Left militants.

It was recommended by attendees that the use of counter-intelligence measures should be emphasized in individual or organizational cases.

It was recommended that additional emphasis be placed on anti-war movement activists who are moving towards violence and civil disobedience, such as Rennie Davis.

It was recommended that the field be alert in following selective service cases involving individuals who are affiliated with such groups as the "East Coast Conspiracy," and the like.

It was recommended that the Bureau consider a photographic manual with first-rate physical description be prepared for field offices. The manual would contain background and photographs of individuals connected with violence-oriented groups and who travel and organize widely.

A G E N D A

NEW LEFT MOVEMENT CONFERENCE
ROOM 733, OLD POST OFFICE BUILDING
SEPTEMBER 10-11, 1970

Agenda for September 10, 1970

Introductory Comments

9 A.M. - 9:14 A.M.	Comments made by Assistant to the Director, Mr. W. C. Sullivan
9:15 A.M. - 9:45 A.M.	Comments of Assistant Director, Mr. C. D. Brennan
9:45 A.M. - 10 A.M.	Comments of Section Chief, Mr. R. L. Shackelford who will act as moderator for the following topics of discussion.

Seminars on the Following Topics:

10 A.M. - 12 Noon	Nature of the New Left, its subversive intent and its threat to the internal security of the nation. Basis for our investigation of the New Left Movement...presidential directives, statutes, and executive orders. Selected attendees should give description of New Left activities in their respective areas.
12 Noon - 1 P.M.	Objectives of our investigations such as neutralization of the New Left Movement, curtailment of its activities. Investigative responsibilities concerning individuals and organizations.
1 P.M. - 2 P.M.	Lunch

b6
b7C

2 P.M. - 3 P.M.

Investigative responsibilities as to funds and publications.

3 P.M. - 4 P.M.

Foreign influence in New Left antiwar groups (New Mobe, etc.)

4 P.M. - 5 P.M.

Investigative techniques - informants

5 P.M. - 6 P.M.

Counterintelligence - unusual investigative techniques

6 -

Agenda for September 11, 1970

Seminars on the Following Topics:

9 A.M. - 11 A.M.

Violence-oriented groups which include Weatherman faction, White Panther Party, Yippies. Attendees should be able to discuss aspects of such groups which include communal life style and use of underground press as communication center.

b6
b7C

11 A.M. - 1 P.M.

Prosecutive action against the New Left which includes sabotage, anti-riot laws and bombing matters.

1 P.M. - 2 P.M.

Lunch

2 P.M. - 2:30 P.M.

Venceremos Brigade

2:30 P.M. - 3 P.M.

Pro-Chicom organizations

3 P.M. - 4 P.M.

New Left fugitives. Handling of fugitive cases such as Weatherman, etc.

4 P.M. - 5 P.M.

New Left student groups such as SDS, Worker Student Alliance, SDS revolutionary Youth Movement, SDS unaffiliated and other New Left student groups.

5 P.M. - 7 P.M.

Open discussion on items covered above. Attendees should make concrete suggestions on new approaches to the New Left Movement, streamlining procedures administrative details, improved techniques on such items as informants and counterintelligence recommendation should be received concerning steps and curtailing New Left militants.

Seat of Government Personnel at Conference 9/10-11/70

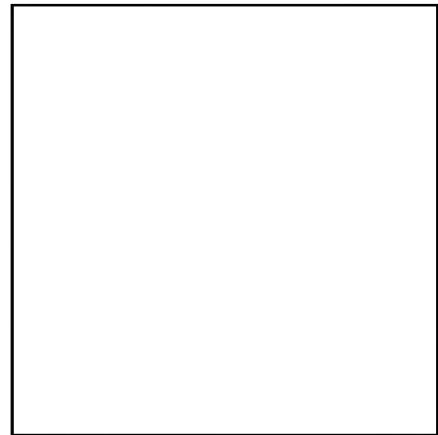
Assistant to the Director:	William C. Sullivan
Assistant Director:	Charles D. Brennan
Inspector- Number One Man:	J. A. Sizoo
Chief, New Left Section:	Robert L. Shackelford
Number One Man, New Left Section:	Conrad W. Thompson

Special Agents:

<div style="border: 1px solid black; width: 150px; height: 80px;"></div>	Domestic Intelligence Division)
	" " "
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<div style="border: 1px solid black; width: 150px; height: 20px;"></div>	(General Investigative Division)
<div style="border: 1px solid black; width: 150px; height: 40px;"></div>	(Special Investigative Division (Training Division, Monitor)
E. P. Grigalus (Inspection Division)	

ATTENDEES

1. Albany
2. Baltimore
3. Boston
4. Buffalo
5. Chicago
6. Cincinnati
7. Cleveland
8. Denver
9. Detroit
10. Los Angeles
11. New Haven
12. New Orleans
13. New York
14. Philadelphia
15. San Francisco
16. Seattle
17. WFO



William John Nolan



ASAC Gerald D. Cookley



Thomas J. Croke



W. B. Anderson



*Attached are suggested
Topics submitted by
the field for your review*

ND INDIVIDUALS

R MATTERS

violence.

as and explosives

ding threat of political

ATHERMAN

Coordination

- 9 -

Obviously, there must exist a line of communication between the above-mentioned groups which enables them to coordinate their mutual objectives in destroying the government and the existing order in the United States. Racial differences as such are meaningless to the black militant and the New Leftist inasmuch as their common denominator is the annihilation of the existing order. Again, what counterintelligence measures can be utilized in alienating the New Leftist from the black militant and vice versa. (Cincinnati)

Verification of the whereabouts of active SDS and/or radical SDS or New Left Types.

Verification of the whereabouts of active New Left persons should be stepped up, and those who are missing should be circularized among the various Field Divisions. This would be particularly true of persons who have gone to Cuba with the Venceremos Brigade (VB) and whose whereabouts are currently unknown. Some form of circularization should exist between Field Divisions. (Los Angeles)

Reporting standard should be established, as investigations in the New Left are a daily occurrence and

- 11 -

VIOLENCE ORIENTED ORGANIZATIONS AND INDIVIDUALS

REVIEW OF RECENT DEVELOPMENTS IN NEW LEFT MATTERS

Advocacy and perpetration of violence.

Acquisition and use of firearms and explosives

Urban guerrilla warfare including threat of political kidnappings in U.S. (Chicago)

ANALYSIS OF CURRENT INVESTIGATION OF WEATHERMAN

Fugitive investigations

Intelligence investigations

Coordination

- 9 -

The nexus between the new Left and black militants.

Obviously, there must exist a line of communication between the above-mentioned groups which enables them to coordinate their mutual objectives in destroying the government and the existing order in the United States. Racial differences as such are meaningless to the black militant and the New Leftist inasmuch as their common denominator is the annihilation of the existing order. Again, what counterintelligence measures can be utilized in alienating the New Leftist from the black militant and vice versa. (Cincinnati)

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Reporting standard should be established, as investigations in the New Left are a daily occurrence and

- 11 -

Procurement of weapons, explosives and other material for black groups.

Ideology which portrays blacks as vanguard of revolution. (Boston)

New Left on the offensive.

It is apparent that the New Left will settle for nothing less than the complete destruction of The Establishment and the annihilation of its adherents as witnessed by the intimidation of law enforcement generally throughout the country. Uniformed and plainclothes police officers have been killed and injured by New Leftists and other militants. Federal and police buildings have been bombed and police vehicles and property have been destroyed. What measures have been taken to preserve the safety of FBI personnel, space and property? (Cincinnati)

The nexus between the New Left and black militants.

Obviously, there must exist a line of communication between the above-mentioned groups which enables them to coordinate their mutual objectives in destroying the government and the existing order in the United States. Racial differences as such are meaningless to the black militant and the New Leftist inasmuch as their common denominator is the annihilation of the existing order. Again, what counterintelligence measures can be utilized in alienating the New Leftist from the black militant and vice versa. (Cincinnati)

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Reporting standard should be established, as investigations in the New Left are a daily occurrence and

Chicago believes it would be most helpful if SOG representatives from Domestic Intelligence, General Investigative and Special Investigative Divisions supervising Weatherman intelligence, Antiriot Law and fugitive cases would be present during discussion of the above. (Chicago)

Use of your Agents in campus and non-campus militant groups. (Denver)

Coordinating explosive theft information through all Bureau Offices. (Denver)

Any guidelines which could be utilized by field in determining feasibility of placing extremely violence prone but young New Left subjects on Security Index. (WFO)

Explore the possibility of setting up a Weatherman-Anarchist "Top 10" separate and distinct from the Bureau's original list. This could be justified in view of the violent crimes being committed by such subjects who bomb government buildings, military installations, police departments. (WFO)

Investigative techniques for communes. (Philadelphia)

Photo albums including all activists. (Philadelphia)

Methods of penetrating underground operations.
(Buffalo)

Utilization of Special Agents in undercover capacity.

Utilization of specialized surveillance vehicles, such as Volkswagens, motorcycles, vehicles with psychedelic paint jobs.

Seminar on types of concealed recording equipment available and successful methods devised for use of such devices to record speeches of New Left Activists. Feasibility of informants or sources using devices. (Boston)

New Left influence over and liaison with black extremist groups in fields of:

Fund raising.

Verification of Priority I Weatherman as to residence and employment every 45 days.

Analysis of modus operandi (Weatherman types).

Communications.

Source of weapons and explosives.

Seminars for young Agents working in the field to be brought up to date as to terminology and the ideology of New Left - Violent types and approaches to be used in interviews. (San Francisco)

Mr. Frances J. Martin
Criminal Division

10-31-78

FEDERAL GOVERNMENT

Federal Bureau of Investigation

U. S. vs. L. PATRICK GRAY III, ET AL

Reference is made to your memorandum of 10-25-78.

For your information, the various documents that were found among the files of the United States Attorney's Office in New York relating to a September 1970 supervisor's conference concerning the Weatherman have already been disclosed in one form or another to the defense in this matter.

Furthermore, FBIHQ file 100-446997 entitled "New Left" has been reviewed and serials pertinent to Discovery were included in a supplemental response to Discovery questions Gray 4, 54, 59h and Miller 27 and 33h. This response was previously furnished to you for release to the defense.

REC-126

62-118845-96

6 OCT 31 1978

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
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Public Affs. Off. _____
Telephone Rm. _____
Director's Sec. _____

sent to Alex
10/30/78
PVD:ddf
(4)

Greenberg/Gray-2646

31 1978
MAIL ROOM ☐

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**Memorandum**

Assoc. Dir. _____
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 Dep. AD Inv. _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
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 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

TO : The Director

DATE: 11-1-78

FROM : Legal Counsel *JAM*SUBJECT: UNITED STATES v. L. PATRICK GRAY, ET AL
CRIM. NO. 78-000179, DISTRICT OF COLUMBIA

Attached is a letter addressed to me dated October 27, 1978, which I received today and which enclosed a memorandum from Breckinridge Willcox Criminal Division, addressed to "Witnesses for the Trial" dated October 27, 1978.

The letter and its enclosure address the list of potential witnesses for United States v. L. Patrick Gray, et al. The list of current FBI personnel who may be called does not indicate their current offices of assignment, but it appears that they are located at FBI Headquarters and throughout the field. The request is for these employees to be made available for purposes of the trial during a four-week period commencing January 22, 1979. The letter and memorandum are self-explanatory as to the arrangements. We are requested to forward this information to the listed employees.

RECOMMENDATIONS:

1. That the listed employees be made available for testimony, if called.

REC-80

62-118045-96X

39 XEROX

FEB 1 1979

APPROVED: *unw*

Director

Assoc. Dir. *JAM*

Dep. AD Adm. _____

Dep. AD Inv. _____

Adm. Serv. *Re/m*

Crim. Inv. _____

Ident. _____

Intell. _____

Laboratory _____

Legal Coun. *JAM*

Plan. & Insp. _____

Rec. Mgnt. _____

Tech. Servs. _____

Training _____

Public Affs. Off. _____

Enclosure

- detached & handled separately*
- 1 - Mr. Adams
 - 1 - Mr. McDermott
 - 1 - Mr. Long
 - 1 - Mr. Colwell
 - 1 - Mr. Mintz

JAM:bpr
(6)

CONTINUED - OVER

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

79 FEB 05 1979

FBI/DOJ
RECORDS UNIT

Memo Legal Counsel to the Director
Re: United States v. L. Patrick Gray, et al

RECOMMENDATIONS: (Continued)

2. That the Administrative Services Division identify the current offices of assignment of each and furnish to each listed employee a copy of the October 27, 1978, memorandum from Mr. Willcox to me and a copy of the October 27, 1978, memorandum from Mr. Willcox to "Witnesses for the Trial."

APPROVED: <i>Wm</i>	Adm. Serv. <i>Ref/2/78</i>	Legal Coun. <i>Jm</i>
Director	Crim. Inv. _____	Plan. & Insp. _____
Assoc. Dir. <i>Jm</i>	Ident. _____	Rec Mgnt. _____
Dep. AD Adm. _____	Intell. _____	Tech. Servs. _____
Dep. AD Inv. _____	Laboratory _____	Training _____
		Public Affs. Off. _____

3. That in connection with recommendation #2 above, the Administrative Services Division verify the availability of each listed employee for the four-week period beginning January 22, 1979, and appropriately advise the Criminal Division.

APPROVED: <i>Wm</i>	Adm. Serv. <i>Ref/2/78</i>	Legal Coun. <i>Jm</i>
Director	Crim. Inv. _____	Plan. & Insp. _____
Assoc. Dir. <i>Jm</i>	Ident. _____	Rec Mgnt. _____
Dep. AD Adm. _____	Intell. _____	Tech. Servs. _____
Dep. AD Inv. _____	Laboratory _____	Training _____
		Public Affs. Off. _____

Greenberg/Gray-2648

Mr. Francis J. Martin
Criminal Division

11-6-78

RD [redacted]
Federal Bureau of Investigation

U. S. vs. L. PATRICK GRAY III, ET AL

C The following was undertaken pursuant to your instructions emanating from your recent conversations with the Central Intelligence Agency (CIA) concerning material referred to that agency by the FBI in connection with the court ordered Discovery in this case.

On October 30, 1978, Defense Attorneys Thomas A. Kennelly and Howard S. Epstein reviewed the CIA referrals in question for content and pertinence. Upon completion of this review, they made an oral request for many of the documents in which the referred material was contained. *rd*

In accordance with their request, four copies of the documents in redacted form, along with an inventory, are enclosed for your release to the defense. The documents are listed on the inventory by CIA's referral number followed by a brief description as it appears in FBI files to facilitate any future retrieval.

It should be noted that material contained in the enclosure is classified to the level of "SECRET."

Enclosures

REC-39
ST-113 *RD*62-118045-97
22 DEC 6 1978

Hand carried to Dept 11/6/78 RD/mb

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Dep. AD Adm. _____
Dep. AD Inv. _____
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Director's Sec'y _____

DMC:ddf
(4)

Greenberg/Gray-2649

MAIL ROOM ☒

7 9 DEC 15 1978

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**Memorandum**TO : Mr. Bassett *mg*

DATE: 11-7-78

FROM : *PW*b6
b7C

SUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
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 Legal Coun. _____
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 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

b6
b7C

PURPOSE: To advise evidentiary hearing tentatively scheduled for November 16, 1978, in support of defendant Miller's motion to dismiss indictment because of loss and/or destruction of Bureau documents.

DETAILS: On October 27, 1978, the attorneys for former Assistant to the Director Edward S. Miller submitted a motion to the court to dismiss the indictment of Mr. Miller "because of the loss and/or destruction of documents within the possession, custody and control of the government which are material to the preparation of his defense or in mitigation of punishment, in violation of his rights under Rule 16, Federal Rules of Criminal Procedure, Brady v. Maryland, 373 U.S. 83 (1963), and his Constitutional right of due process." A copy of the motion is attached. By way of background, certain materials seized by the Department in August 1976 in connection with the surreptitious entry inquiry from file cabinets in Bureau space were reviewed by the Department and returned to the Bureau employees who had custody at the time of the seizure. Subsequently, the Department made efforts to retrieve some of the returned material at which time it was discovered some of the material had been destroyed and other material could not be located. It is this material on which the defense is basing its motion.

In the motion, the defense attorneys requested the Judge have an evidentiary hearing; and according to Departmental Trial Attorney Francis J. Martin, such a hearing has been scheduled tentatively for November 16, 1978. Martin stated that while a list of government witnesses has not been finalized

Enclosure *ENCLOSURE*

REC-65

62-118045 97X
MAR 18 1980

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - Mr. Long
- 1 - Mr. Bassett

ST-118

- 1 - Mr. Mintz
- 1 - Mr. Boynton

- 1 -

b6
b7C

(CONTINUED - OVER)

PVD:ddf

(8)

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

[] to Bassett Memo
Re: U. S. vs. L. Patrick Gray III, et al

b6
b7C

for purposes of this hearing, he anticipates the following will be witnesses: [] (former), Robert L. Shackelford (former), [] ASAC Joseph P. Schulte, Jr., and Assistant Director Richard E. Long. Martin stated that after the hearing plans become finalized, he will be in contact with Bureau representatives to discuss plans for this hearing.

b6
b7C

RECOMMENDATION: None. For information.

APPROVED: <i>W</i>	Adm. Serv. _____	Legal Coun. _____
<i>W</i> Director _____	Crim. Inv. _____	Plan. & Insp. _____
Assoc. Dir. _____	Ident. _____	Rec. Mgnt. <i>had</i>
Dep. AD _____	Intell. _____	Tech. Serv. _____
Dep. AD Inv. _____	Laboratory _____	Training _____
		Public Affs. Off. _____

62-118045-97X

ENCLOSURE

Greenberg/Gray-2652

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :

v. :

Crim. No. 78-000179

L. PATRICK GRAY, III :

W. MARK FELT and :

EDWARD S. MILLER :

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO DISMISS INDICTMENT
BECAUSE OF LOSS AND DESTRUCTION OF DOCUMENTS

Factual Background

In defendant Miller's Motion to Dismiss the Indictment because of Pre-Indictment Delay, filed on May 22, 1978, we requested leave of the Court to submit a supplemental memorandum following completion of discovery. We stated at page 6 of our memorandum supporting that motion, that there were indications from the government that certain discovery materials requested by the defendants, and which the government agreed to provide, may have been lost or destroyed. Defendants have now been formally advised that a great number of these documents have indeed been lost and/or destroyed. See letter of Francis J. Martin to all counsel dated August 17, 1968 attached hereto as Exhibit "A" (without enclosures).

The situation, as we understand the letter, is as follows: In early August 1976, the prosecutors assigned to the investigation which ultimately led to this indictment decided to review certain FBI files. These included all files kept in the offices of FBI officials in New York. I Headquarters who had responsibility for the Weatherman investigation. On August 19, 1976 some 22 file cabinets were removed from Internal

WID. SIEGEL & KENNEDY
ATTORNEYS AT LAW
500 CONN. AVE., N. W.
SUITE 1112
WASHINGTON, D. C. 20036
(202) 872-0700

Greenberg/Gray-2653

ENCLOSURE

62-118045-97X

Greenberg/Gray-2654

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :

v. :

Crim. No. 78-000179

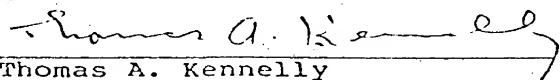
L. PATRICK GRAY, III
W. MARK FELT and
EDWARD S. MILLER :

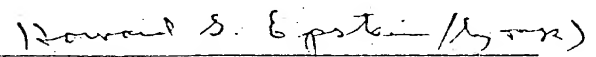
DEFENDANT MILLER'S MOTION TO DISMISS
INDICTMENT BECAUSE OF LOSS AND DESTRUCTION
OF DOCUMENTS

Defendant Edward S. Miller moves the Court to dismiss the indictment because of loss and destruction of documents within the possession, custody and control of the government which are material to the preparation of his defense or in mitigation of punishment, in violation of his rights under Rule 16, Federal Rules of Criminal Procedure, Brady v. Maryland, 373 U.S. 83 (1963), and his Constitutional right of due process.

Attached hereto is a Memorandum of Points and Authorities in Support of Said Motion.

Respectfully submitted,


Thomas A. Kennelly


Howard S. Epstein
DIUGUID SIEGEL & KENNELLY
1000 Connecticut Avenue, N. W.
Suite 1112
Washington, D. C. 20036
(202) 872-0700
Attorneys for Defendant Miller

DIUGUID, SIEGEL & KENNELLY
ATTORNEYS AT LAW
1000 CONN. AVE., N. W.
SUITE 1112
WASHINGTON, D. C. 20036
(202) 872-0700

Greenberg/Gray-2655

Security Section number two (IS-2). This section was also known variously as the "New Left Section" and the "Revolutionary Activities Section." The section had primary responsibility for the Weatherman investigations, and it was part of the Domestic Intelligence Division, which was headed by Mr. Miller in 1971-73.

The 22 file cabinets were reviewed by FBI agents working with the prosecutors. The agents made a list of all file folder titles, and turned over some documents to the prosecutors. The files were then returned to the IS-2 Section, at the direction of the prosecutors.

Two months later, in October 1976, the prosecutors requested that 232 file folders be retrieved from IS-2 for further review. It was then discovered that in the interim some 47 of these folders and their contents had been destroyed - apparently by one or more Bureau personnel.

It also appears that other documents, in addition to those above, have been lost or destroyed. Mr. Martin's letter states (at page 3): "In the nearly two years since the initial review and return of the files, some files have been rearranged, moved, and possibly destroyed in the normal course of business."

The government has provided us with a written inventory of all lost and destroyed file folders. Below is a partial list of the missing folders. [Those marked with an asterisk (*) were designated by the prosecutors for retrieval and review in October 1976]:

Field Supervision - Newark

Field Supervision - New York

Internal Security Section

* FBI supervisors' Orientation Course

MR. SID. SIEGEL & KENNEDY
ATTORNEYS AT LAW
200 CONN. AVE., N. W.
SUITE 1112
WASHINGTON, D. C. 20036
(202) 872-0700

- * Files Maintained in IS-2 Sec.
- * In-Service Schedule
- * Inspection Matters - Field
- * Inspector's Aides
- * Inspection - 1971
- * Inspection August, 1971
- * Inspection August, 1972
- * Inspection - October, 1973

Lecture Records

Memo - Bu. Officials and Supvsrs. 1973

SAC Memorandum 1973

SAC Letters 1972

Fugitive List - All Extremist

Intelligence Evaluation Comm. (IEC)

Key Activist Program - Policy

Policy - Inv. of New Left

RA - Violence Spector Program Policy

NY 13532 - PSI RE Machtinger Case NY

Weathfug Legats Folders

Weathfug - Bureau Memos and Instructions Vol. (?)

Weathfug - Bureau Memos and Instructions Vol. (?)

Weathfug - Bureau Memos and Instructions Vol. (?)

Weathfug - Bureau Memos and Instructions Vol. (?)

Five copies of Sup material from New York Office and Attorney General, volumes 44 through 47 and 49 through 65 and true copies. (Material charged out to Mendenhall, Rm. 4427)

Travel to Communist China

Travel of U.S. Citizens to N. Korea

Travel to N. Vietnam

Chinese Communist Influence on the Domestic

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Subversive Movement

U.S. Citizens in China

- * Weatherfug Outgoing Comm. 9/13/72 - 1/23/73
- * Weatherfug Outgoing Comm. 6/28/73 - 8/28/73
- * Weatherfug Outgoing Comm. 8/29/73 - 11/9/73
- * Weatherfug Outgoing Comm. 5/7/73 - 6/27/73
- * Weatherfug Outgoing Comm. 3/23/73 - 5/7/73
- * Weatherfug Outgoing Comm. 1/24/73 - 3/22/73
- * Weatherfug Outgoing Comm. 11/10/73 -
- * Monthly Weatherfug Memos on Individuals
- * Memos for Miller Re New Left Fugitives
- * Policy - Manual Revisions
- * Policy Jurisdiction
- * FBI Jurisdiction
- * Memorandum to Miller from Schackleford
- * Unlabeled file containing letter

Policy - Dept. Investigative Guidelines

FBI Guidelines

- * Weatherfug - Policy
- * Weatherfug - Policy (FBIHQ)
- * Weatherfug - Bu instructions & memos to 9/7/72
- * Field Inspections
- * Graylet

Intelligence Oversight Board

- * Investigative Guidelines

Jurisdiction

- * NSA Requests

Investigative Priorities

- * Special Projects

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Eight reports either Confidential or Secret

One Report Domestic Subversive Activities

- * "Surreptitious Entries", one folder
- * "Permanent Policy Ticklers" (through 1974)

An Analysis of FBI Domestic Intel Investigations Authority etc., 10/28/75

Memo, 1/22/73, Legal Counsel to Adams

As we understand it, all of the above documents were in the custody or control of the prosecutors in August 1976. All came directly from the Intelligence Division, which Mr. Miller headed during the period in question. None are presently available.

Applicable Law

The leading case in this Circuit (and cited in many other jurisdictions) on the duty of the government to preserve evidence is U.S. v. Bryant (Bryant I), 439 F.2d 642 (D.C. Cir. 1971), wherein taped conversations between defendant and government witnesses were unaccountably "lost". The Court of Appeals enunciated the following rule:

Accordingly, we hold that sanctions for non-disclosure based on loss of evidence will be invoked in the future unless the Government can show that it has promulgated, enforced and attempted in good faith to follow rigorous and systematic procedures designed to preserve all discoverable evidence gathered in the course of a criminal investigation. (This in original; fn. omitted.)

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Ibid. at 652.

The Bryant court initially pointed out that access by defense counsel to certain evidence gathered by the government is protected by both constitutional and statutory safeguards and that "it is the law in this circuit that the due process requirement applies to all evidence which 'might have led the jury to entertain a reasonable doubt about [defendants'] guilt' and that this test is to be applied generously to the accused when there is 'substantial room for doubt' as to what effect disclosure might have had." (Fn. omitted.) Ibid. at 647-48. See also U.S. v. Butler, 499 F.2d 1006, 1007 (D.C. Cir. 1974); U.S. v. Harrison, 524 F.2d 421, 433 (D.C. Cir. 1975); U.S. v. Harris, 543 F.2d 1247, 1251, (9th Cir. 1976).

The burden is on the government to show promulgation and enforcement of vigorous and systematic procedures designed to ensure preservation of all discoverable evidence; and the duty of preservation exists from the earliest stages of the investigation. Bryant I, supra at 652; U.S. v. Perry, 471 F.2d 1057 (D.C. Cir. 1972); U.S. v. Butler, supra at 1008.

Further, negligent failure to comply with the required procedures will provide no excuse. Bryant I, supra at 652, 653. Obviously a showing of bad faith would violate the duty to preserve, but a showing of bad faith is not required. The court in Bryant I remanded for a hearing to determine the circumstances which led to non-preservation. On the second appeal, U.S. v. Bryant (Bryant II), 448 F.2d 1182 (D.C. Cir. 1971), the court took pains to point out that

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The District Court in its findings of fact and conclusions of law, seemed to assume that only showings of bad faith by the Government were relevant on demand. However, we made very clear in our original opinion remanding the cases that negligent failure to preserve discoverable evidence was highly relevant on remand and would result in imposition of full sanctions in the future.

Ibid. at 1184, fn. 2.

On remand it was determined that the agent custodian of the tape recording made no effort whatever to preserve it under the customary procedures. The Bryant II court viewed this failure as follows: "The fact that he acted in direct violation of a Bureau rule makes his conduct extremely negligent and, in the future, would surely result in imposition of full sanctions." (Fn. omitted.) Ibid. at 1184.

Since its decisions in the Bryant cases, the Court of Appeals has consistently held that non-preservation of evidence will not be excused just because it is attributable to mere negligence. U.S. v. Quiovers, 539 F.2d 744, 747 (D.C. Cir. 1976); U.S. v. Perry, 471 F.2d 1057, 1063 (D.C. Cir. 1972) ("the Government does not necessarily exonerate itself from the penalty of the [Jencks] statute by pleading 'good faith'." In fact, in Perry the court suggested, and we urge here, that where due process considerations are involved, a negligent loss may be ground for imposition of sanctions if the trial court finds that

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the unavailability of the material seriously prejudices the defense. Ibid. at 1065-66. See also U.S. v. Maynard, 476 F.2d 1170, 1177 (D.C. Cir. 1973).

With regard to negligence or bad faith in the case at bar, it is noted in Mr. Martin's letter (at page 2) that there may be administrative action taken against the former head of the IS-2 section who allegedly destroyed some of the files. This suggests that the government considers the non-preservation as at least negligent if not in bad faith.

Nor is the government excused because the documents may have been in the hands of its agents rather than its prosecutors at the time of loss. In the instant case, apparently some of the loss or destruction occurred after the prosecutors relinquished control to the FBI. The duty of disclosure affects not only the prosecutor, but the government as a whole, including its investigative agencies. Bryant I, 439 F.2d at 650. See also U.S. v. Perry, 471 F.2d at 1068; U.S. v. Quiovers, 539 F.2d at 746; Barbee v. Warden, 331 F.2d 842, 846 (4th Cir. 1964); Boone v. Paderick, 541 F.2d 447, 450-51 (4th Cir. 1976).

There is guidance for this case, perhaps even a mandate, from the D.C. Circuit in Bryant II. The court, after remand, noted that the loss was the result of direct violation of a Bureau of Narcotics and Dangerous Drugs rule by a Bureau agent. The court warned: "The fact that he acted in direct violation of a Bureau rule makes his conduct extremely negligent and, in the future, would surely result in imposition of full sanctions." 448 F.2d at 1184.

Nor is there any exception to the administrative determination that certain evidence need not be preserved. U.S. v.

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Harrison, supra, 524 F.2d at 434, citing Bryant I. Mr. Martin's letter, at page 2 (footnote) states: "Headquarters ticker [sic] copies, i.e., extra copies of documents in regular Bureau files, were exempt from the non-destruction order because they were routinely destroyed (every 30 to 60 days) and the originals, of which they are copies, are permanently maintained in regular FBI files. It is possible that 'Do Not File' memoranda were kept in tickler files; they should not, but may have been destroyed."

Such administrative decisions were specifically condemned in Bryant II, supra, 448 F.2d at 1184: "In the future, of course, investigative agencies will not be allowed to excuse non-preservation of evidence by claiming that it contained nothing of interest to defendants." And in a footnote on the same page, the court added: "It is the defendant's right to discover such evidence and decide for himself such usefulness."

The same point had been made in Bryant I, 439 F.2d at 652, fn. 21: "Although there is an exception for good faith loss of evidence, there is no exception for good faith administrative decision that certain evidence is not discoverable and thus need not be preserved." The point was reiterated in U.S. v. Butler, supra, 499 F.2d at 1008. See also, the Ninth Circuit decision in U.S. v. Harris, 543 F.2d, 1247, 1252 (1976), citing with approval Bryant I: "The [Bryant I] court further hammered home the point that the courts, not the investigators or the prosecutors, make the decision as to whether evidence is discoverable, and that this decision cannot be made if the evidence has been destroyed."

Materiality and Prejudice in this Case

The Supreme Court in Brady v. Maryland stated: "We now hold that the suppression by the prosecution of evidence

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favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963). Rule 16 gives a defendant the right to inspect all documents which are material to the preparation of his defense.

The accused's dilemma, of course, is in convincing the court of materiality and prejudice when he cannot precisely describe what is in the missing documents. As the D. C. Circuit put it in U.S. v. Quivers: "We recognize the logical force of the contention that it is impossible to determine with certainty whether a defendant was prejudiced without knowing precisely what is contained on the missing tape recording." 539 F.2d at 746 (D.C. Cir. 1976).

Fortunately in this case we are not completely in the dark. We know that, as to the 47 missing file folders at least, all of them came directly from the IS-2 Section, which had the primary responsibility for conducting the Weatherman investigations. Mr. Miller, as head of the Domestic Intelligence Division, was directly responsible for the operations of the IS-2 Section. On this basis alone it would seem that all the files of IS-2 pertaining to the Weatherman investigation during the period of the indictment are material to this case.

The government seems to agree, for it stated in its "Response Of The United States To Defendants' Motions For Discovery And Inspection", at page 2: "[T]he government has undertaken to make available to defense counsel all FBI files relating to the Weatherman Organization, to its members and supporters, as well as to the 'relatives and acquaintances' of Weatherman

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fugitives who are referred to in para. 6 and Overt Acts 6 through 32 of the Indictment. These Weatherman files contain all known information concerning the FBI's Weatherman investigation, including information relating to the use of warrantless surreptitious entries and searches, wiretaps, microphone installations, mail covers, mail openings, informants and undercover agents." Now the government admits that it cannot do what it told the court earlier this year it was doing.

This court also agreed that such documents are material when it granted in part Mr. Miller's Discovery Requests 12, 13, 14, 15, 16 and 17 insofar as they reach FBI, White House or Department of Justice documents which involve surreptitious entries in the Weatherman Underground Organization or refer to terrorists groups which can be reasonably understood to refer to the Weatherman fugitives. Similar requests by Gray and Felt were granted by the court.^{1/}

Further, the titles of the missing file folders provide strong evidence of their materiality. It would be difficult indeed to conclude that documents contained under the following titles are not material to this case, or that Mr. Miller is not prejudiced by the loss of opportunity to examine them:

Policy - Inv. of New Left

Weathfug - Bureau Memos and Instructions

Chinese Communist Influence on the Domestic

^{1/}

It is worth noting that the Court specifically granted Gray's request for "Do Not File" status and Order, August 17, 1978, p. 11. Mr. Martin testified that "Do Not File" documents may have been destroyed with the tickler files that were exempt from the non-destruction order. Martin letter, Exhibit "A" hereto, p. 2, fn.

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Greenberg/Gray-2665

Subversive Movement

- * Weatherfug Outgoing Com. 9/13/72 - 11/10/73
- * Memos for Miller re New Left Fugitives
- * Memorandum to Miller from Shackelford
- Policy - Dept. Investigative Guidelines
- * Weatherfug - Policy
- * Investigative Guidelines
- * "Surreptitious Entries", one folder

Finally, the prosecutors themselves in October 1976 must have thought the documents were material, because those designated with an (*) were among the documents specifically designated by the prosecutors for retrieval during the investigation.

Sanctions

The rule enunciated in Bryant I and II, supra, does not require automatic dismissal of the indictment. Nevertheless, the D. C. Circuit has clearly warned that "full sanctions" will be imposed in appropriate circumstances. See, e.g., Bryant II, 448 F.2d at 1184; Harrison, 524 F.2d at 434. In 1976, at about the same time the investigation in this case was initiated, the D. C. Circuit warned again in U.S. v. Quiovers that the sanction of dismissal "may appropriately be invoked in some cases - such as where the loss of evidence is deliberate or results from an agency's failure to prescribe adequate systematic procedures, or where there is a substantial likelihood of serious prejudice to the defendant." 539 F.2d at 746.

Mr. Martin's letter seems to describe circumstances which call for the imposition of full sanctions in this case.

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In 1958, long before Bryant, the Ninth Circuit approved dismissal of an indictment under circumstances similar to those at bar. In U.S. v. Heath, 260 F.2d 623 (1958), the IRS had obtained records from the defendant. He asked for their production under Rule 16. They could not be located. The trial court concluded that the defendant could not present his defense without the records, and dismissed the indictment. Although the question before the Ninth Circuit was the right of the government to appeal the dismissal, the court stated: "If the question was before this Court, which it is not, we should have no difficulty in sustaining the trial judge in the findings and in requiring the government to produce the documents as a condition precedent to trial, since these were, without question, vital to the defense." Ibid. at 626.

Heath is analagous to the instant case. Although the documents were not taken directly from Mr. Mller, they were taken from the office which was responsible for the Weatherman investigation, and over which he had supervision. Conceptually then, they were taken from him and with the same effect of prejudicing his ability to prepare his defense.

Request for Evidentiary Hearing

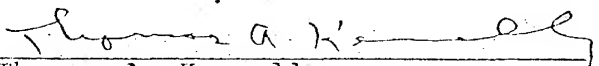
The rule enunciated in Bryant I, supra requires that the District Court conduct a hearing to determine the degree of bad faith, negligence or inadvertence, and the risk of prejudice. U.S. v. Perry, 471 F.2d at 1060 (D.C. Cir. 1972); U.S. v. Maynard, 476 F.2d at 1177 (D.C. Cir. 1973). The court is under the necessity of ascertaining the circumstances leading to the non-preservation. U.S. v. Butler, 499 F.2d at 1008 (D.C. Cir. 1974).

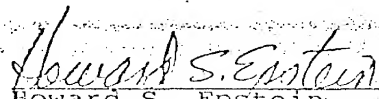
1000 S. GLENN STREET
ATTORNEYS AT LAW
1000 S. GLENN STREET, N. W.
SUITE 1112
WASHINGTON, D. C. 20036
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The burden is on the government to show that it has promulgated, enforced and attempted in good faith to follow rigorous and systematic procedures designed to preserve all discoverable evidence. Bryant I, supra, at 652.

Accordingly, defendant Miller requests that this court order an evidentiary hearing, and that the government be directed to produce for examination at said hearing Mr. William J. Gardner, Department of Justice attorney who was in charge of the investigation in 1976, and Mr. Robert Shackelford, former IS-2 section chief.

Respectfully submitted,


Thomas A. Kennelly


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Greenberg/Gray-2668

62-118045-97X

ENCLOSURE

Greenberg/Gray-2669

August 17, 1978

Address Reply to the
Division Indicated
and Refer to Initials and Number
FJM:ams

Alan I. Baron, Esquire
Brian Gettings, Esquire
Thomas A. Kennelly, Esquire

Re: United States v. Gray, et al

Dear Sirs:

As previously stated, during both informal and formal discovery proceedings, the government has agreed to provide, to the extent still available, the "fruits" of a "search" conducted on August 19, 1976. As initially indicated, not all of the documents are still in existence. In order that the defense may be fully informed with regard to the matter, there is set out below a summary of the relevant facts.

The investigation that led to the indictment in this case commenced in the late spring-early summer of 1976, after it was discovered that bag jobs in the Weatherman investigation had occurred in New York during 1972-73. In order to determine the full extent of illegal activity in the FBI's Weatherman investigation, a team of FBI agents was assigned to review all major Weatherman files at FBI headquarters and in over two dozen field offices. The agents were instructed to look for and to copy any documents that might refer, in any fashion, to a bag job, an illegal wiretap, a mail opening, or the authorization for, or policy with respect to, any of those techniques. The agents working with the prosecutors did not "seize" such files; rather, the files, as would be the normal course, were "checked out" and reviewed. Copies of relevant documents were made, and the files were then returned.

EXHIBIT "A"

Greenberg/Gray-2670

In early August 1976, the prosecutors decided that, in addition to the regular Weatherman files, any files kept in the offices of officials in New York or at headquarters who had responsibility for the Weatherman investigation should also be reviewed. (See inventory item 180) This was done on August 19, 1976. In order to facilitate this review, the files of the Internal Security Section number two (IS-2), which were voluminous, were removed to a separate area for review over a number of days. These files were reviewed by FBI Agents working with the prosecutors and were then returned to the IS-2 Section. That review disclosed approximately sixty-four relevant documents, which were provided to the prosecutors. Enclosed are the various reports from Richard Long, then investigative coordinator for the surreptitious entry investigation. These reports contain inventories of the various filing cabinets and enclosed documents selected as relevant to the investigation. (See inventory, items 154 to 177)

The inventories prepared by these agents consisted essentially of a list of file folder titles and did not detail any of the specific documents within a folder. In October 1976, the prosecutors requested that certain of these file folders be retrieved for further review. (See inventory item 183) At that time it was learned that some files that had been returned to IS-2 had since been destroyed by former IS-2 section chief Robert Shackelford. Copies of Mr. Shackelford's statements concerning this destruction are enclosed. (See inventory items 181 and 182) There is pending a referral to the FBI by the Department of Justice for possible administrative action against Mr. Shackelford based, among other matters, upon his destruction of those files.*

*/This destruction by Mr. Shackelford contravened specific instructions from Assistant Attorney General Pottinger and from Director Kelley. A copy of Mr. Pottinger's May 28, 1976 memorandum and Director Kelley's June 1, 1976 teletype are enclosed. (See inventory items 178 & 179) Headquarters ticker copies, i.e., extra copies of documents in regular Bureau files, were exempt from the non-destruction order because they are routinely destroyed (every 30 to 60 days) and the originals, of which they are copies, are permanently maintained in regular FBI files. It is possible that "Do Not File" memoranda were kept in tickler files; they should not, but may have been, destroyed.

The present state of the files which were reviewed beginning on August 19, 1976 is as follows: certain of the material has clearly been destroyed, almost exclusively by Mr. Shackelford. Mr. Shackelford is of course available to be interviewed concerning these files and should be contacted through his attorney, Mr. Joseph Morrissey of Washington, D.C. In the nearly two years since the initial review and return of the files, some files have been rearranged, moved, and possibly destroyed in the normal course of business. In order for the government to be able to make all of those files available to the defense as discovery, they have again been gathered together and re-inventoried. Enclosed you will find a detailed inventory of the files which were reviewed in August 1976. (See inventory item 185) This inventory was prepared in August 1976 and lists all file folders which were reviewed at that time. The inventory has been updated to show, in addition to the file folders available in August 1976, which file folders were designated by the prosecutors for additional review in October 1976 (232 folders); which of these additional file folders were located at that time (185 folders); which file folders are presently available (approximately 7 four-drawer filing cabinets); and the number of documents presently in each folder. Finally, noted above, there are enclosed herewith copies of those documents which were selected as relevant by the reviewing agents and forwarded to the prosecutors in 1976. (See inventory items 154-177)

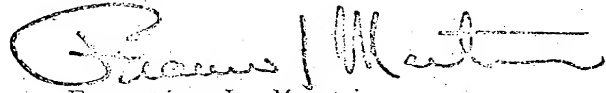
23
- 18
4

You may, of course, examine any of the files listed in the enclosed inventory, these files are quite voluminous. In order to expedite the discovery process you should, as soon as possible, designate those files that you wish to examine. Once thus designated, such files will be reviewed for purposes of redaction and will then be made available to you. It may be beneficial to the overall efficiency of this process for you to meet with Special Agents Paul Daly and Joseph Tierney, who are familiar with the files and may be able to give you some helpful guidance. They are also available to review some of the files for you if you can designate for them specific matters of interest to

Greenberg/Gray-2672

you. This latter procedure would greatly expedite matters by avoiding the necessity for a redaction review of entire files. Should you desire their assistance, they may as you know be contacted at 324-3542.

Sincerely,

A handwritten signature in dark ink, appearing to read "Francis J. Martin". The signature is fluid and cursive, with the first name "Francis" being more prominent and the last name "Martin" following in a similar style.

Francis J. Martin
Trial Attorney
Criminal Division

Greenberg/Gray-2673

PSURE

62-118045-97X

Greenberg/Gray-2674

CERTIFICATE OF SERVICE

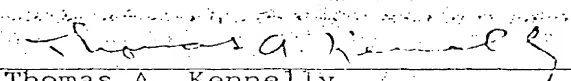
I hereby certify that a copy of the foregoing Motion to Dismiss, Memorandum of Points and Authorities and proposed Order were mailed, postage prepaid, this 27th day October, 1978 to:

Barnet D. Skolnik, Esquire
Assistant U. S. Attorney
United States Court House
101 West Lombard Street
Baltimore, Maryland 21201

Francis J. Martin, Esquire
Department of Justice
Federal Triangle Building
Room 600
Washington, D. C. 20530

Alan I. Baron, Esquire
1300 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201

Brian P. Gettings, Esquire
1400 N. Uhle Street
Arlington, Virginia 22201


Thomas A. Kennelly

Greenberg/Gray-2675

ENCLOSURE

62-118045-97X

Greenberg/Gray-2676

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

L. PATRICK GRAY, III
W. MARK FELT and
EDWARD S. MILLER

Crim. No. 78-000179

ORDER

Defendant Miller, having requested an evidentiary hearing on the issue of loss and/or destruction of discoverable documents, pursuant to his motion to dismiss the indictment, and good cause appearing therefor, it is hereby

ORDERED, that an evidentiary hearing be held before this Court on _____, 1978, at _____ M. in Courtroom No. 1 and it is

FURTHER ORDERED, that the Government will produce for examination at said hearing Mr. William J. Gardner and Mr. Robert Shackelford.

Dated: _____, 1978

CHIEF JUDGE

Greenberg/Gray-2677

b6
b7C

Mr. Benjamin R. Civiletti
Deputy Attorney General

11-13-78

FEDERAL GOVERNMENT

b6
b7C

Federal Bureau of Investigation

U. S. vs. L. PATRICK GRAY III, ET AL

The subpoena of current and former FBI personnel in connection with the forthcoming trial of former Bureau officials presents problems which I believe must be addressed as soon as possible. As you are aware, defense attorneys and their staff have been given access to documents pursuant to informal and court ordered discovery. Where necessary, information was redacted to protect sources, ongoing investigations, and the privacy of unrelated third parties.

Similar restraints must be imposed on the kind of information given to the defense through its interviews as well as testimony during the actual trial. These restraints must be expanded in the interview or testimony context to include protection of third agency information since it will not be possible to secure that agency's approval prior to release as is being done with documents. Title 28, Code of Federal Regulations, Section 16.21, et seq., sets forth the requirement that current and former personnel seek approval prior to releasing information pursuant to subpoena or demand. In view of those provisions, you are requested to have appropriate instructions issued concerning this matter so that current and former Bureau personnel interviewed or testifying in this matter will have guidelines as to what information may or may not be disclosed.

- 1 - Mary C. Lawton, Deputy Assistant Attorney General
Legal Counsel
1 - Robert Keuch, Deputy Assistant Attorney General
Criminal Division
1 - Barnett D. Skolnik

REC-39

62-118045-98

ST-118

DEC 6 1978

62-118045

NOV 13 1978

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SEE NOTE PAGE TWO.

PVD:ddf
(11)

9 DEC 13 1978

FBI/DOJ

NOTE: Current and former employees have been subpoenaed in connection with the above-described trial. The Department is required by the cited CFR provisions to furnish instructions and/or guidelines as to what information might be disclosed. We have been informed that the defense attorneys in this matter are currently planning interviews of witnesses, and it is essential that the Department furnish guidance prior to these interviews being conducted.

ms

APPROVED: _____

WLB Director _____

Assoc. Dir. _____

Dep. AD/Adm. _____

Dep. AD Inv. _____

Adm. Serv. _____

Crim. Inv. _____

Ident. _____

Intell. _____

Laboratory _____

Legal Coun. _____

Plan. & Insp. _____

Rec. Mgnt. *HWD*

Tech. Servs. _____

Training _____

Public Affs. Off. _____

Greenberg/Gray-2679

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

TO : Mr. Bassett *MB*

DATE: 11-17-78

FROM : *[Redacted]* b6
b7C



SUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL

b6
b7C

PURPOSE: To furnish background information relating to an article appearing in the November 16, 1978, issue of The Washington Post alledging that former President Nixon approved FBI break-ins (copy attached).

DETAILS: The Washington Post news article states that material furnished to the defense attorneys in this matter includes an August 1970 letter to President Nixon enclosing a copy of a strongly worded letter to Special Agents in Charge of FBI Field Offices concerning the Weatherman fugitives. Brian Gettings, who is the attorney for former Acting Associate Director W. Mark Felt, stated that the "overwhelming evidence" contained in these documents indicated that President Nixon authorized the initiation of certain aspects of the Huston Plan which included surreptitious entries. *res*

ST-113 *REC-39* *62-118045-99*
The Huston Plan, actually titled "Special Report of the Interagency Committee on Intelligence," removed restraints on the use of certain investigative techniques, among which it provides for the use of surreptitious entries against domestic targets. Mr. Hoover rejected the plan after its approval by the President. The rejection was contained in a memorandum to the Attorney General, dated July 27, 1970. Apparently, the defense attorneys in captioned matter believe that the plan was secretly implemented in part. This is based on a conversation President Nixon had with former Director Hoover sometime around August 17, 1970. The conversation is recorded in Bureau files in the form of a letter to the President, dated August 17, 1970, which enclosed a copy of a letter to all Special Agents in Charge. The content of the letter to the President indicates the *DEC 6 1978*

Enclosures

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - Mr. Bassett
- 1 - *[Redacted]*

b6
b7C

(CONTINUED - OVER)

Greenberg/Gray-2680



PVD:ddf

9 DEC 6 1978 U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

☐ to Bassett Memo
Re: U. S. vs. L. Patrick Gray III, et al

b6
b7c

President's discussion with the Director concerned the intensification of investigative efforts concerning the Black Panther Party, Students for a Democratic Society, and Weatherman (copy attached).

There is no reference to surreptitious entries or the Huston Plan in the letter. Apparently, the defense is basing their position that Nixon approved these matters on material not referred to in the news article. Two separate memoranda were prepared in The White House, dated August 5 and August 7, respectively, recommending the President contact Mr. Hoover and advise Mr. Hoover of his wishes that the plan be implemented. The defense apparently believes the phone call referred to in the August 17, 1970, letter was prompted by these memoranda and, in effect, represented a lift of the restraints and partial implementation of the Huston Plan. Copies of The White House memoranda in question are attached. We have not located any material in Bureau files indicating the Huston Plan was initiated.

RECOMMENDATION: None. For information.

APPROVED: *W. J. [Signature]*

W. J. [Signature]
Director
Assoc. Dir.
Dep. AD Inv.
Dep. AD Inv.

Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____

Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. HND
Tech. Servs. _____
Training _____
Public Affs. Off. _____

Greenberg/Gray-2681

Greenberg/Gray-2682

62-118045-99

ENCLOSURE

Nixon Approved Break-Ins, Ex-FBI Aide Tells Court

By Ronald J. Ostrow
Los Angeles Times

The FBI secretly implemented part of the illegal Huston plan for break-ins, wiretaps and mail openings to hunt down fugitive Weatherman terrorists in 1970, a federal court was told yesterday.

Then-President Nixon has said he killed the plan—named after White House aide Tom Charles Huston—in July 1970, only five days after approving it, because of strong objections to the plan from then-FBI Director J. Edgar Hoover.

But a lawyer for W. Mark Felt, former No. 2 man in the FBI, said in a court motion yesterday that "certain

recommendations" of the plan were put into action after a mid-August 1970 conversation between Nixon and Hoover.

Until now, it had been believed that authority for the break-ins that the FBI conducted in its search for Weatherman terrorists came from no higher than FBI headquarters in Washington.

If Felt's claim of presidential approval, which attorney Brian Gettings said would be demonstrated by "overwhelming evidence at trial," stands up, Felt and two other indicted former bureau officials may be able to claim that authorization of the tactics used against the terrorists was legal.

Felt and former acting FBI director L. Patrick Gray III and Edward S. Miller, former assistant director for domestic intelligence, are scheduled to go on trial here in January on charges of conspiring to violate the rights of friends and relatives of the terrorists by approving the illegal tactics.

Gettings said in an interview that the "overwhelming evidence" supporting Felt's contention was gleaned from material that prosecutors supplied in response to defense requests.

The Nixon-Hoover conversation was held over the telephone when both men were in California in August 1970, Gettings said. He refused to say

how he knew what was said during the conversation.

Following the phone call, according to Gettings, Hoover wrote Nixon, enclosing a copy of a strongly worded letter he had written special agents in charge of the nation's 59 FBI field offices and all FBI legal attaches based in foreign lands.

That letter relayed Nixon's instructions to intensify efforts to track down the Weatherman fugitives. Hoover also told the agents he was "going to hold you personally responsible" for the outcome of the fugitive hunt.

An FBI spokesman declined to com-

See FBI, A6, Col. 2

ber 16, 1978 THE WASHINGTON POST

Nixon Approved Break-Ins, Court Told

FBI, From A1

ment on the assertion that the bureau had put into action the Huston plan's package of illegal tactics.

But a source familiar with the FBI said Hoover's warning to the special agents that he would hold them personally responsible was "vintage but-reause"—the kind of word Hoover frequently employed to fire up subordinates.

R. Stan Mortenson, one of Nixon's Washington lawyers, said Nixon and Hoover had frequent telephone conversations, but added that "a lot of things could have been said without saying implement" illegal tactics.

Mortenson said he had not interviewed Nixon on the Huston plan implementation, adding that the former president had not been contacted about testifying as a witness at the upcoming trial.

A hearing set for today on destruction of evidence in the break-in case by a former FBI official, Robert Shackelford, was postponed because

of the illness of chief U.S. District Court Judge William B. Bryant, an aide to the judge said.

FBI Would Concede Suit, Won't Yield Informant Data

NEW YORK (AP)—The federal government, still insisting that it must not release FBI files containing information about informants, said yesterday that it is willing to concede a \$40 million damage suit filed by the Socialist Workers Party.

"We would rather lose the case than turn over the files of these informants," U.S. Attorney Robert Fiske Jr. told a three-judge panel of the 2nd U.S. Circuit Court of Appeals, which is reviewing a lower court's contempt citation against Attorney General Griffin B. Bell.

The nation's chief legal officer was cited last July by U.S. District Court Judge Thomas Griesa after Bell defied Griesa's order that he turn over 18 FBI informant files to the Socialist Workers. Griesa denied a motion by the Socialist Workers to have Bell jailed before the appeal and suspended sentencing pending appeal.

Fiske said the government also had offered to concede the suit before Griesa. He said the judge should have granted Bell the alternative of defaulting on the suit rather than surrendering the FBI files, said to contain the names of about 100 informers.

The government's willingness to concede the case means it would submit to a partial judgment if the plaintiffs show they lost revenue or suffered other damages because of the government's activities.

Arguing against the government's offer, Leonard Boudin, lawyer for the Socialist Workers, said he still needed the files because "we do not know the details of the wrongdoings and the quantity of the wrongdoings."

The suit charged the FBI with break-ins and other illegal acts in the course of its surveillance of the party from its founding in 1933 until 1976, and Boudin contends the files are needed to determine whether damages exceeded the tentative \$40 million estimate.

The appellate court took the appeal under advisement and continued a temporary stay of the contempt order against Bell.

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. C. D. Brennan

DATE : 8/13/70

FROM : Mr. G. C. Moore

SUBJECT : EXTREMIST ACTIVITIES
IN THE UNITED STATES

Tolson _____
Sullivan _____
Mohr _____
Bishop _____
Brennan, C.D. _____
Callahan _____
Casper _____
Conrad _____
Felt _____
Gale _____
Rosen _____
Tavel _____
Walters _____
Soyars _____
Tele. Room _____
Holmes _____
Gandy _____

Pursuant to Director's instructions, an SAC Letter is attached instructing the field to intensify investigation of the extremist organizations which might engage in kidnaping and holding as hostages of high ranking Government officials, diplomats, and foreign officials, as well as members of their families.

Recent activities in Latin America and United States by extremist elements indicate that kidnapings of foreign and public officials and members of their families may become more prevalent. For example, the Black Panther Party in its propaganda has condoned the recent action of criminals in San Rafael, California, where the judge and members of the jury were taken as hostages and which resulted in the killing of the judge as well as three others involved in the abduction. It is reasonable to assume that extremist elements, as the Panthers, the Students for a Democratic Society, including the Weatherman faction, and similar violence-prone organizations may utilize this tactic with greater frequency in the future. Accordingly, we are alerting all offices and instructing that the SAC assure that the investigations of such extremist organizations is intensified and that informant coverage is developed to the point whereby we receive advance notice of such plans.

ACTION: Attached for your approval is a letter to all SACs in accordance with the above.

- ENCLOSURE *EX-110*
ENCLOSURE *FILED AS 66-04-3754X*
Enclosure *TO 66-04-3754X*
- 1 - Mr. Sullivan *Cons 11/5/77*
 - 1 - Mr. Mohr
 - 1 - Mr. C. D. Brennan
 - 1 - Mr. Casper
 - 1 - Mr. Felt
 - 1 - Mr. Rosen
 - 1 - Mr. Shackelford
 - 1 - Mr. R. D. Cotter
 - 1 - Mr. Wannall
 - 1 - Mr. G. C. Moore

GCM:bjr (11)

59 SEP 2 1970

SENT DIRECTOR
FOR APPROVAL
8-11-70



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

August 17, 1970.

Letter to All Special Agents in Charge:

RE: INVESTIGATION OF
EXTREMIST ORGANIZATIONS

Dear Sir:

Recent activities in Latin America as well as in California on the part of revolutionary extremists in the kidnaping of public officials and diplomats for hostage purposes dictate the need for intensification of investigation of such extremist organizations as the Black Panther Party, the Students for a Democratic Society including the Weatherman faction, and similar violence-prone organizations both national and local in scope.

I consider this to be a matter of greatest importance and am holding you personally responsible for the development of informant coverage in these organizations whereby the Bureau is in a position to ascertain the plans of such extremist elements which might call for the abduction or kidnaping of high-ranking Government officials (local and Federal), members of the diplomatic corps, and United Nations officials as well as members of any of their families for hostage purposes.

Your efforts in this regard will be the subject of close scrutiny during future inspections.

Very truly yours,

J. Edgar Hoover

John Edgar Hoover
Director

Best Copy Available.

August 17, 1970

BY LIAISON

The President
The White House
Washington, D. C.

1 - Mr. Mohr
1 - Mr. Casper
1 - Mr. Callahan
1 - Mr. Conrad
1 - Mr. Felt
1 - Mr. Gale
1 - Mr. Rosen
1 - Mr. Tavel
1 - Mr. Walters
1 - Mr. Soyars
1 - Tele. Room
1 - Miss Holmes
1 - Miss Gandy

Dear Mr. President:

In line with our conversation the other evening, I have had instructions issued to every one of our field offices and to our Legal Attaches abroad to intensify investigation of such extremist organizations as the Black Panther Party and the Students for a Democratic Society, including the Weatherman faction, whose members may make an effort to kidnap high-ranking Government officials, members of the diplomatic corps and members of their families.

You will find enclosed a copy of these instructions for your information.

I am advising the Attorney General in this regard.

Sincerely yours,

J. Edgar Hoover

Enclosure

CCM:DJR/lrs

(7)

NOTE: In addition to an OAC Letter being issued, each Legat has separately been instructed by cablegram.

SEP 13 11 10 AM '70

SENT DIRECT
8-15-70

Best Copy Available.

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION*Memorandum*

TO : Mr. Bassett *Handwritten initials*

FROM : *Handwritten initials* b6
b7C

SUBJECT: U. S. vs. L. PATRICK GRAY III, ET AL

DATE: 11-20-78

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. *Handwritten mark*
 Rec. Mgnt. *Handwritten mark*
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

b6
b7C

On October 17, 1978, Francis J. Martin, Departmental Attorney, advised that the evidentiary hearing in captioned matter has been rescheduled for November 29, 1978, at 9:30 a. m., in the court room of Judge William B. Bryant, U. S. District Court, District of Columbia. The results of this hearing will be promptly furnished.

RECOMMENDATION: None. For information.APPROVED: *Handwritten initials*

Handwritten initials
 Director _____
 Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____

Adm. Serv. _____

Crim. Inv. _____

Ident. _____

Intell. _____

Laboratory _____

Legal Coun. _____

Plan. & Insp. _____

Rec. Mgnt. *Handwritten mark*

Tech. Servs. _____

Training _____

Public Affs. Off. _____

- 1 - Mr. Adams
 1 - Mr. McDermott
 1 - Mr. Bassett
 1 - Mr. Colwell
 1 -

b6

b7C

ST-113

REC-39

62-118045-1000

22 DEC 6 1978

Greenberg/Gray-2693

62-118045

DOC. *Handwritten initials* REV. *Handwritten initials*DMC:ddf
(6)

7 DEC 20 1978 Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**Memorandum**

TO : MR. McDERMOTT

DATE: 11-21-78

FROM : H. N. BASSETT *HNB*SUBJECT: *L. Patrick*
UNITED STATES v. GRAY, et al -
UPCOMING HEARING

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. *HP*
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

b6
b7cPURPOSE:

The purpose of this memo is to advise of receipt of a memo from Francis J. Martin, Criminal Division, Department of Justice (DOJ), requesting extensive investigation by the Bureau relative to missing file folders. Further, to advise of countermanding instructions from Mary Lawton, Deputy Assistant Attorney General, Office of Legal Counsel, DOJ, to the effect we should do nothing concerning this request until it has been cleared with Mr. Paul Michel of the Department who, according to Ms. Lawton, is coordinating this matter for the Department.

DETAILS:

As a matter of background, a conference was held with the Director on Friday, 11-17-78, at which time it was explained that a communication such as the attached might be forthcoming in the immediate future and the ramifications involved if such were received. At this meeting, the Director indicated that we should cooperate fully and if there were any inherent problems on receipt of such a document that interested parties of the Department and the ~~FBI should get~~ together to work them out.

11 JUN 12 1979

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At approximately 10:30 A.M., 11-21-78, the original of the attached copy was hand delivered to the Task Force in the FBI handling Discovery requests. Contrary to our prior belief that such a document might be forthcoming from the Deputy Attorney General, as noted this is a memo from Francis J. Martin to []

Also, it is noted the requested investigation is extremely extensive in nature which would require a considerable commitment of resources in an extremely short period of time, it being noted that the upcoming hearing is scheduled for Wednesday, 11-29-78. In any event, after discussing this communication with a representative

Enc. *detached & handle separately*

- 1-Mr. Adams
- 1-Mr. McDermott
- 1-Mr. Mintz
- 1-Mr. Colwell

HNB:jmr

CONTINUED - OVER

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

b6
b7c

FBI/DOJ



53 JUN 13 1979

Memo to Mr. McDermott from H. N. Bassett
Re: United States v. Gray, et al - Upcoming Hearing

of the Task Force, I instructed that Ms. Lawton be contacted to determine if a meeting could be held immediately and, further, to express our concern over the closing statement which indicates the Department did not believe it would be necessary to use the Miranda or any other administrative warning to those employees being interviewed. This was completely contrary to the concerns expressed by Ms. Lawton when she visited Bureau Headquarters on Friday, 11-17-78.

SA [] of the Task Force telephonically contacted Ms. Lawton at approximately 11:40 A.M. today. She expressed considerable surprise over our receipt of this communication and instructed that the original be returned as soon as possible to Paul Michel since, as indicated previously, he was coordinating this matter and to Ms. Lawton's knowledge was unaware that it had been delivered to the FBI.

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b7C

In view of the above conflict, SA [] also telephonically contacted Frank Martin and he advised that his letter had been cleared with Paul Michel and, in fact, expressed the opinion that a short cover letter from Michel to the Director with a copy of his letter attached should be in the Director's Office at this time. Our concern regarding an appropriate warning to our employees was expressed to Martin and his general attitude was one of not believing there was a problem, indicating at this point that Shackelford would be the most seriously affected and the Department had no intention of indicting him for the destruction of material. He did note, however, that he would be willing to meet with Bureau representatives to further clarify this particular issue. It is our belief that this should be explored further with Martin with a representative of our Legal Counsel Division present. We also believe that we should obtain from Martin further clarification concerning his comment appearing as the last sentence on page 2 as it applies to the burden of interviewing all individuals who had custody of these files. Appropriate contact will be made with Martin this date to clarify these two issues.

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b7C

As noted previously, this inquiry is going to require extensive man-power and time is not on our side. Moreover, another part of Martin's letter is somewhat unclear where he indicates that those Agents who worked on the Task Force headed by Assistant Director Long should be provided with an inventory and then instructed to contact Martin. This would appear to preclude an interview of these 24 Agents by Bureau personnel. In any event, this will be worked out. Following discussion with Martin and a review of other background material, we will have a better idea as to our manpower needs. This figure should be forthcoming

Greenberg/Gray-2700

Memo to Mr. McDermott from H. N. Bassett
Re: United States v. Gray, et al - Upcoming Hearing

no later than the morning of 11-22-78; however, upon approval of this memo it is anticipated that we will have to draw manpower, Agent and support, from all of the Headquarters Divisions on a prorated basis. This may, of necessity, include some of the Agents which were borrowed from other divisions previously to work on this Task Force.

RECOMMENDATION:

The foregoing is for information. You will be kept advised of developments.

APPROVED: _____	Adm. Serv. _____	Legal Coun. _____
Director _____	Crim. Inv. _____	Plan. & Insp. _____
Assoc. Dir. _____	Ident. _____	Rec. Mgnt. <u>HND</u>
Dep. AD Adm. _____	Intell. _____	Tech. Servs. _____
Dep. AD Inv. _____	Laboratory _____	Training _____
		Public Affs. Off. _____

Greenberg/Gray-2701

Francis J. Martin
Criminal Division

11-28-78

FEDERAL GOVERNMENT

b6
b7C

Federal Bureau of Investigation

U. S. vs. L. PATRICK GRAY III, ET AL

My memorandum of November 20, 1978, advised you that we were attempting to interview the preparer of the October 23, 1975, memorandum captioned "'Do Not File' Memoranda, Testimony Concerning" in an effort to determine what inquiry that individual made prior to preparing the memorandum in question. SA [redacted] prepared the memorandum and advised on November 27, 1978, that the memorandum was prepared after consultation with the former Assistant Director of the Intelligence Division, W. R. Wannall. He did not recall contacting the various Section Chiefs in the Intelligence Division in connection with this memorandum. Since he did not make a general inquiry, there appears to be no basis for suspecting that former Section Chief Robert Shackelford or anyone else in the IS-2 Section made any misrepresentations concerning this matter. Part A (2) of your memorandum of November 20, 1978, requested that we ascertain what dissemination was made of the June 1, 1976, teletype concerning the destruction of files and to obtain, if possible, an Assistant Director's tickler copy of the teletype. [redacted] and SA [redacted] of the Intelligence Division were unable to locate a copy of the teletype in the Intelligence Division, nor could they find any indication what action was taken with regard to the directives in the teletype precluding records destruction.

b6
b7C

SA [redacted] located a copy of the teletype in the tickler folder of SA [redacted] which ticklers were maintained in the Planning and Inspection Division. I am enclosing a copy of that teletype, and it would appear that this may have been the copy of the teletype designated for the Intelligence Division. This observation is based on the fact that SA [redacted] was assigned to that Division at the time in question and was handling liaison with William L. Gardner in connection with the surreptitious entry inquiry.

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b7C

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

ENCLOSURE

1 - Mr. Adams
1 - Mr. McDermott
1 - Mr. Bassett
1 - [redacted]

b6
b7C

PVD:ddf
79 DEC 15 1978

Delivered to F. Martin
11/28/78. JCB
62-118045

6888 JE 14

Francis J. Martin

It would appear the teletype was sent to [] for information and that no further action was taken on the teletype. It should also be noted that the informative note on the teletype contains no reference to the destruction of tickler copies of communications.

b6
b7C

Former Assistant Director Thomas L. Leavitt of the Intelligence Division, whose initials appear on the file copy of this teletype, was contacted by our Atlanta Office and had no recollection of the teletype.

SA [] was telephonically contacted by me on November 25, 1978, at which time he advised he recalled the teletype of June 1, 1976. He could not recall having taken any action on the teletype, nor could he recall having seen the teletype circulated through the Intelligence Division. [] did state that he had seen other copies of the teletype in the possession of other employees but did not recall the circumstances under which the other employees had possession of the teletype. There appears to be no other individuals that could logically be contacted in connection with this aspect of your requested investigation. Unless a further request is received, I will consider the requested investigation Part A, Sections 1, 2, and 3, of your November 20, 1978, memorandum as having been completed.

b6
b7C

APPROVED:

Director _____
Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____

Adm. Serv. _____
Crim. Inv. _____

Ident. _____
Intell. _____
Laboratory _____

Legal Coun. _____

Plan. & Insp. _____

Rec. Mgnt. _____

Tech. Servs. _____

Training _____

Public Affs. Off. _____

Greenberg/Gray-2703

PLAINTEXT

TELETYPE

b6
b7C

URGENT

4843

JUNE 1, 1976

TO ALL SACS AND LEGATS

FROM DIRECTOR FBI

SURREPTITIOUS ENTRY

1 - Mr. Callahan
1 - Mr. Jenkins
1 - Mr. Adams
1 - Each Assistant
Director

EFFECTIVE IMMEDIATELY, ALL EMPLOYEES ARE HEREBY
INSTRUCTED NOT TO DESTROY ANY DOCUMENTS, WHETHER IN
OFFICIAL FILES, PERSONAL POSSESSION, OR OTHERWISE,
RELATING TO SURREPTITIOUS ENTRY OR ANY OTHER SECURITY
OR INTELLIGENCE FILES, MEMORANDA, DATA, INFORMATION OR
PAPERS. THIS INSTRUCTION APPLIES TO ALL COPIES AS WELL
AS ORIGINAL MATERIAL AND TO INDEX CARDS, ABSTRACTS, AND
SUMMARIES WHEREVER THEY MAY BE LOCATED.

ADVISE ALL EMPLOYEES OF THIS INSTRUCTION.

NOTE: Mr. Adams requested this communication be prepared in
response to item #4 in a memorandum from Assistant Attorney General,
Civil Rights Division, to the Director dated May 28, 1976, captioned
"Surreptitious Entry Investigation."

JAM:mfd

Greenberg/Gray-2704

62-118045-101
ENCLOSURE

MLH
11/24/78

UNITED STATES GOVERNMENT

*Memorandum*UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y. _____

TO : [REDACTED]

b6
b7C

DATE: 11/24/78

FROM : M. L. Hanigan *MLH*SUBJECT: *L. Patrick O*
United States v. Gray, et al. -
Upcoming Hearing

sd
CW
On 11/24/78, [REDACTED] Planning and Inspection Division, made available six tickler folders of former Headquarter's supervisor [REDACTED] who was during 1976, serving as the coordinator for Division V of an investigation being conducted under the direction of J. Stanley Pottinger, Assistant Attorney General.

b6
b7C

I examined three of six folders on 11/24/78 in an attempt to locate any Division V tickler copy of a teletype to all SAC's and Legats from the Director, FBI, dated June 1, 1976, entitled, "Surreptitious Entry." In a folder designated as "#6 surreptitious entry" I located such a tickler. *res*

That tickler copy was removed by me, initialed and dated on the front and back. The front portion of this tickler copy bears in blue ink the name [REDACTED] (illegible)" and in pencil the number "4843." On the reverse side of the tickler was a date and time stamp of June 1, 1976, 12:13 pm, received Intelligence Division. *REC-39 62-118045-102*

b6
b7C

ST-118
The note appearing on this tickler copy did not include the sentence, "Ticklers for information only at FBIHQ need not be retained per instructions of Wm. J. Gardner, 6/1/76."

22 DEC 6 1978

The tickler copy is being delivered personally to you by the writer.

Greenberg/Gray-2705

b6
b7C

MLH:bac (3)

bac

79 DEC 15 1978 Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

1 - Mr. Adams
1 - Mr. McDermott
1 - Mr. Bassett

November 27, 1978

Francis J. Martin
Trial Attorney
United States Department of Justice

FEDERAL GOVERNMENT

L. Patraio
UNITED STATES V GRAY, AND OTHERS

The following information is being furnished in partial response to your memorandum of November 20, 1978.

Part A (1) of your memorandum sought a determination of whether the destruction of tickler copies of communications (for information only) was consistent with Bureau policy and other non-destruction directives in effect at the time the June 1, 1976, teletype described in your memorandum was sent. The FBI placed restrictions on the National Archives and Records Service approved destruction of records plan at the request of Senators Hugh Scott and Mike Mansfield. The request was contained in their letter of January 27, 1975. I am enclosing a copy of this letter as well as the FBI teletype to all offices and Legal Attaches dated January 29, 1975, advising Bureau personnel that all record destruction should be terminated. With the approval of certain Committees of Congress and the Attorney General, the restrictions were lifted in a series of separate decisions. The lifting of the restrictions are contained in Bureau airtels to all offices dated March 3, 1976, April 27, 1976, and October 7, 1976, captioned "Destruction of Field Files and Records." Copies of these documents are enclosed for your review. These restraints on file destruction are directed to materials in our files and not tickler copies. The policy for retention of tickler copy correspondence was set forth in the Manual for Bureau Supervisors. The policy in effect during the appropriate time provided for the retention of ticklers at the discretion of the employee. I am enclosing a copy of the provision of the section of the Supervisor's Manual pertaining to tickler copies. In summation, the destruction of tickler copies for information only was not in contravention of the policy at the time.

ENCLOSURE

Part A (3) of your memorandum pointed out that the Bureau had informed "Congresswoman Abzug's Committee" that there was no current "Do Not File" system in the Bureau and requested in part we determine whether an inquiry was made prior to making this representation to that Committee. I am enclosing copies of the following materials which respond to

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

Enclosures

PVD:dd

(7)

SEE NOTE PAGE TWO.

MAIL ROOM

79 DEC 15 1978

delivered to F. Martin
11/27/78 JCB
62-118045

REC-38

62-118045-103
DEC 6 1978

Francis J. Martin
Trial Attorney
United States Department of Justice

that request; memoranda dated October 22, 1975, and October 23, 1975, captioned, "Do Not File Memoranda Testimony Concerning," J. J. McDermott to Mr. Jenkins and E. J. Cassidy to Mr. W. R. Wannall, respectively. Also enclosed is a copy of the printed record of pertinent portions of hearing on December 1, 1975, before the Subcommittee on Government Information and Individual Rights of the House Government Operations Committee.

To date, we have not been able to determine whether former Section Chief of IS-2 Robert Shackelford or anyone else in that Section made misrepresentations concerning the existence of "Do Not File" memoranda. We are attempting to interview the preparer of the Intelligence Division response as contained in October 23, 1975, memorandum in an effort to determine if he inquired of that Section.

NOTE: This is a partial response to Martin's memorandum. Martin requested on November 24, 1978, that he be advised periodically of the results of our inquiry to determine the answers to questions raised in his memorandum of November 20, 1978.

APPROVED:	Adm. Serv.	Legal Coun.
Director	Crim. Inv.	Plan. & Insp.
Assoc. Dir.	Ident.	Rec. Mgnt. <i>HNS</i>
Dep. AD Adm.	Intell.	Tech. Servs.
Dep. AD Inv. <i>am</i>	Laboratory	Training
		Public Affs. Off.

Airtel

10/7/75

To: SAC, Albany

PERSONAL ATTENTION

From: Director, FBI

DESTRUCTION OF FIELD
FILES AND RECORDS

By Bureau Airtel, April 27, 1976, captioned as above, you were advised that the moratorium on file destruction had been lifted and that you should resume the destruction program. However, specifically excluded from destruction at that time were documents relating to matters involved in litigation and matters relating to domestic intelligence; extremist; racial; and foreign counterintelligence, including duplicate copies of this material.

The Attorney General has approved resuming the destruction of duplicate material heretofore excluded and described as follows: Copies of documents preserved only for convenience of reference. Such material is not considered record material according to the definition of records set forth in Title 44, Chapter 33, Section 3301 of the United States Code. However, should any material of this nature contain pertinent action statements placed on a particular copy that is not also on the original copy, the copy should be retained.

The moratorium on destruction of original file copy material in matters involved in litigation and matters relating to domestic intelligence, extremist, racial, and foreign counter-intelligence is still in force. Great care should be taken to insure that the original file copy of such material is not destroyed.

- 1 - Each Field Office
- 1 - Mr. Held
- 1 - Mr. McDermott
- 1 - Mr. Adams
- 1 - Each Assistant Director

TBD:evp (23)

SEE NOTE PAGE 2

62-118045-103
ENCLOSURE

Airtel to SAC, Albany
DESTRUCTION OF FIELD
FILES AND RECORDS

Upon receipt of this communication you should resume the destruction of duplicate material as described above.

This communication may be duplicated as necessary in order to advise appropriate personnel.

NOTE: Based on letter from Director, FBI to the Attorney General 7/28/76 captioned "Senate Select Committee on Intelligence" which set forth the definition of duplicate material, and memorandum from Legal Counsel to the Associate Director, FBI 9/29/76 aforementioned captioned advising of the Attorney General's approval that duplicate material be destroyed.

FBI

Transmit in _____

(Type in plaintext or code)

Via _____

Airtel

(Precedence)

To: SAC, Albany

4/27/76

PERSONAL ATTENTIONFrom: Director, FBI (66-³²786)**DESTRUCTION OF FIELD
FILES AND RECORDS**

Re Butel to all offices 1/29/75 captioned as above which imposed a moratorium on destruction of all field office files and records.

This is to advise that the moratorium has been lifted and all offices should resume the destruction program according to criteria set forth in Bulet to Albany and all offices 3/3/76, same caption. Re Bulet stipulates that all "Auxiliary Office Files" and index cards relating thereto may be destroyed six months after a case is last referred upon completion (RUC) to office of origin with the exceptions of those cases wherein FBIHQ is office of origin or cases are believed to have continuing value for evidentiary, intelligence, historical, or for other reference purposes.

The Attorney General, by letter dated 4/7/76, specifically excluded from destruction at this time those matters relating to domestic intelligence, extremist, racial, and foreign counterintelligence with instructions that great care be taken to insure that no documents involved in litigation are destroyed and that the destruction program leaves intelligence and security files intact. In view of these instructions from the Attorney General material in security classifications identified in the Manual of Rules and Regulations, Part II, Section 3, Page 25, is not to be destroyed. This also includes duplicate copies of this material. You will be advised if and when destruction of material in these security classifications can be resumed.

- 1 - Each Field Office
- 1 - Each Legal Attache

(Do not type below this line.)

Greenberg/Gray-2710

FBI/DOJ

ENCLOSURE

62-118045-103

Airtel to SAC Albany
DESTRUCTION OF FIELD
FILES AND RECORDS

There are two basic destruction rules, (1) ten years and (2) six months, which apply to field office investigative files. These rules are being stated herein and supersede previous instructions applicable to the destruction of field office investigative files:

- 1) Files and records to be destroyed when ten years old:
 - a) Field office investigative files in all classifications, in office of origin provided the files are of no continuing value for evidence, intelligence, historical or other reference purposes.
 - b) Investigative files in auxiliary offices in cases in which the Bureau is office of origin
 - c) Destroy all field office index cards at time related field office file is destroyed.
- 2) Files and records to be destroyed when six-months old if following conditions are met:
 - a) Investigative files in all classifications in auxiliary offices provided files are of no continuing value for evidentiary, intelligence, historical or other reference purposes, or if the case is one in which FBIHQ is office of origin.
- 3) Exceptions to the ten-year and six-month destruction rules include the following field office files and material which are to be retained five years and then destroyed:
 - a) Dead files and index cards related thereto in all classifications if of no continuing value.

Airtel to SAC, Albany
DESTRUCTION OF FIELD
FILES AND RECORDS

- b) Zero files and index cards related thereto in all classifications if of no continuing value.
- c) FBI Law Enforcement Bulletins - (retain index cards)
- d) Record of Information furnished other agencies, FD-159 (control file copy only) to be destroyed after five years. Copy of FD-159 contained in the substantive file and index cards related thereto to be destroyed when substantive field office file is destroyed.

If there is any doubt concerning destruction of the above material by an auxiliary office, that office should consult the office of origin. If there is any doubt about the destruction of a file in an office of origin, that office should consult the Bureau.

In order to establish uniform procedures to be followed in implementing instructions for the destruction of field office files the following guidelines are being set forth:

1. Original FD-302s, Laboratory reports, latent fingerprint reports, and 1A exhibits being retained as the only item(s) in a file due to a previous purge/destruction rule should be forwarded to OO if subject and/or OO file number is available otherwise this material should be retained by auxiliary office and destroyed when 10 years old. If less than 10 years old and office of origin (OO) subject and/or file number is available these items are to be furnished to OO by routing slip or other appropriate transmittal communication. Otherwise, auxiliary office should retain these items until 10 years old and then destroy them.

2. Original FD-302s, Laboratory reports, latent fingerprint reports and 1A exhibits being removed from files which already satisfy the destruction criteria and are not 10 years old are to be forwarded to OO by routing slip and/or other appropriate communication reflecting OO subject and/or file number. Recipient office will assign each FD-302, Laboratory report and latent fingerprint report OO file number and next sequential serial number and place in OO file. Transmittal communication may be filed if appropriate. 1A exhibits are to be filed according to previously established filing procedures.

Airtel to SAC, Albany
DESTRUCTION OF FIELD
FILES AND RECORDS

3. Effective immediately, original FD-302s prepared, and 1A exhibits acquired as a result of current and ongoing investigations are to be forwarded to the OO by appropriate communication with the exception of those 1A exhibits which are to be returned to the contributor in the jurisdiction wherein they were obtained. You may retain these excepted exhibits until they have served their purpose or until the auxiliary office file has satisfied the destruction criteria at which time these exhibits should have served their purpose and should be returned to contributor. However, if additional retention is required, the exhibit should be made a bulky exhibit and two copies of green sheet (FD-192) furnished to OO in accordance with instructions relating to bulky exhibits set forth in paragraph number 5 below.

It is recognized that some concern exists over the delay of original FD-302s reaching OO due to remotely located Resident Agencies. However, it is believed that if this situation does exist, it can be overcome by auxiliary office continuing to follow the present procedure of furnishing copies of the FD-302 to OO by appropriate communication. The original can be forwarded to OO by routing slip once it has been initialed by the Resident Agent and returned to field office headquarters. This procedure is considered highly desirable since the submission of original FD-302 to OO at time case is RUC'd or destroyed would result in these communications being months or even years out of logical sequence in OO file. In order to further streamline and minimize the handling of original Laboratory reports and latent fingerprint reports, auxiliary office will request FBIHQ to furnish these items, and if appropriate, the evidence to office of origin upon completion of Laboratory examinations.

In all current and ongoing investigations where auxiliary office furnished FD-302s, Laboratory reports, latent fingerprint reports, and/or 1A exhibits to OO, a copy of the transmittal as well as a copy of the FD-302 should be retained in auxiliary office file until file is destroyed.

4). In those cases where OO is changed, both the new OO and new auxiliary office will apply the 10 year destruction rule to files in this category. It will be the responsibility of the new OO to advise the original OO when case is closed. This will facilitate the retention of original material that is contained in the files of both offices and will insure that original documents and/or evidence is not prematurely destroyed. At such time the OO is changed it will not be necessary for new auxiliary office to forward existing original FD-302s, Laboratory reports, latent fingerprint reports, and/or 1A exhibits to OO.

Airtel to SAC, Albany
DESTRUCTION OF FIELD
FILES AND RECORDS

Only these items prepared and/or acquired subsequent to changing OO will be furnished to new OO in accordance with aforementioned procedure, unless advised to the contrary by OO. This will be particularly helpful in cases comprised of many volumes and subsections.

5. In the case of bulky exhibits, the auxiliary office should furnish two copies of FD-192 to OO. One copy will be filed in OO case file according to established filing procedures and the other copy will be filed in the bulky exhibit index (numerical sequence of form FD-192 by classification and file number). Auxiliary office will retain original FD-192 in case file, place copy in bulky index, and copy with exhibit. This procedure will facilitate conduct of the semi-annual inventory of bulky exhibits which will be the responsibility of the OO. Semi-annually, when OO reviews bulky exhibits and notes on FD-192 action to be taken, a Xerox copy of this form should be furnished to auxiliary office holding exhibits(s). The most recent FD-192 will supersede the one previously furnished and being retained in the bulky index.

In accordance with the Manual of Rules and Regulations, Part II, Section 3, Page 13a, the Supervisory Special Agent and/or case Agent has the option of retaining and/or authorizing for destruction investigative files after criteria for destruction has been satisfied. The case Agent will either note the appropriate destruction rule on the file copy of the communication closing the case or referring it on completion (RUC), or else note that it should be retained plus appropriate justification for such retention, and designate projected destruction date. Form FD-479, Files and Records Destruction Order, may be used for this purpose.

In all cases, with the exception of FBI Law Enforcement Bulletins, all index cards are to be destroyed at time related file material is destroyed.

Appropriate manual changes are forthcoming.

SAC, ALBANY

3/3/76

Director, FBI (66-3786)

DESTRUCTION OF FIELD
FILES AND RECORDS

Recently a survey was conducted in several field offices for purpose of determining the feasibility of destroying certain "Auxiliary Office Files" when six-months old. As a result of this survey, all field offices will destroy auxiliary office files consistent with guidelines and instructions set forth below once the existing moratorium on records disposal contained in Bureau teletype dated 1/29/75 captioned as above is lifted. Files eligible for destruction under these new guidelines may be handled in accordance with instructions contained in Bureau routing slip dated 4/29/75 above caption which states in part that files eligible for destruction may be removed from regular file location and stored in cartons in readiness for immediate destruction upon instructions from FBIHQ.

1) All "Auxiliary Office Files" and index cards relating thereto may be destroyed six-months after a case is last referred upon completion (RUC) to office of origin with the exception of those cases where FBIHQ is office of origin or cases are believed to have continuing value for evidentiary, intelligence, historical or other reference purposes.

2) Commensurate with available man-power, auxiliary office files which currently meet the new destruction criteria should be reviewed and original FD-302s and LA exhibits of an evidentiary nature removed and forwarded to office of origin. Also, in those cases containing bulky exhibits, a copy of the green sheet(s) (FD-192) should be forwarded to office of origin by routing slip indicating auxiliary file destroyed and requesting instructions for

1 - Each Field Office

1 - Mr. Adams

1 - Mr. Jenkins

1 - Mr. Callahan

1 - Each Assistant Director

TBD:evp (70)

Greenberg/Gray-2715

62-118045-103

Letter to SAC, Albany
DESTRUCTION OF FIELD
FILES AND RECORDS

disposition and/or justification for retention of bulky exhibit. Auxiliary office should retain original green sheet(s) (FD-192) in case file cover until advised by office of origin of action to be taken.

3) Henceforth, original FD-302s and 1A exhibits of evidentiary nature are to be forwarded to the office of origin when prepared and/or acquired. Insofar as bulky exhibits are concerned, auxiliary office is to retain bulky exhibits; however, a copy of the "green sheet" (FD-192) is to be forwarded to the office of origin at the time evidence is obtained. Office of origin will utilize this copy as a tickler in order to immediately notify auxiliary office when and what disposition is to be made of bulky exhibit.

To facilitate the implementation of the six-month destruction program and to insure the "Court of Claims" cases, classification number 83, are not prematurely destroyed, henceforth, the original office of origin will remain origin until case is closed. When the office of origin submits a letter to FBIHQ with a copy to the Washington Field Office (WFO) instructing that WFO follow Court of Claims docket, the office of origin file will be placed in a "pending inactive" status and WFO, acting as auxiliary office, will advise office of origin and FBIHQ when a decision is rendered by the court.

It should be noted that as a result of the new destruction rule, it becomes even more essential that office of origin furnish auxiliary office(s) sufficient data necessary to conduct required investigation.

Existing regulations providing for the use of the master assignment card as a tickler for file destruction purposes are applicable to the foregoing.

It is anticipated that the existing moratorium on records disposal will be lifted in the very near future. Therefore, these new guidelines and instructions are being brought to your attention at this time so that you can become familiar with the changes affecting the records destruction program. However, all records destruction is to be held in abeyance until you are advised by FBIHQ that the moratorium has been removed.

United States Senate
Office of the Majority Leader
Washington, D.C. 20510
January 27, 1975

Honorable Clarence M. Kelley
Director, Federal Bureau of Investigation
Washington, D. C. 20535

Dear Mr. Director:

As you may be aware, the Senate is to conduct an investigation and study of government operations with respect to intelligence activities. The scope of the investigation is set out in S. Res. 21, a copy of which has been enclosed for your information.

We are writing to request that you not destroy, remove from your possession or control, or otherwise dispose or permit the disposal of any records or documents which might have a bearing on the subjects under investigation, including but not limited to all records or documents pertaining in any way to the matters set out in section 2 of S. Res. 21.

Sincerely yours,

Hugh L. Scott

HUGH SCOTT, REPUBLICAN LEADER

Mike Mansfield

MIKE MANSFIELD, MAJORITY LEADER

Enclosure

NML
memo by and to
adams 2/13/75
letter to adams 2/13/75
Senator Scott & Mansfield
dated 2/19/75
JST/wh

2 ENCLOSURE

EX-105
REC-11

62-116395-24

Read to LaPrade by phone 6:11 pm 1/28/75
and requested no destruction of any Bufiles
until further notice. Jm

2 MAR 4 1975

MAR 7 1975

File-RTH
LEG

REC 11

ENCLOSURE
ENCLOSURE

62-118045-103

100-3286

CODE

TELETYPE

IMMEDIATE

1-29-75

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

TO ALL SACS AND ALL LEGATS

FROM DIRECTOR FBI

See Study '75

JAN 29 1975

DESTRUCTION OF FIELD FILES AND RECORDS.

TELETYPE

IN ACCORDANCE WITH PROPOSED INVESTIGATION AND
STUDY OF GOVERNMENT OPERATIONS WITH RESPECT TO INTELLI-
GENCE ACTIVITIES, CONGRESSIONAL LEADERS HAVE REQUESTED
THE BUREAU NOT TO DESTROY, REMOVE FROM OUR POSSESSION
OR CONTROL, OR OTHERWISE DISPOSE OR PERMIT DISPOSAL OF

ANY RECORDS OR DOCUMENTS WHICH MIGHT HAVE A BEARING ON
SUBJECTS UNDER INVESTIGATION. ACCORDINGLY, UPON RECEIPT
OF THIS COMMUNICATION, RECIPIENTS ARE INSTRUCTED TO HOLD
IN ABEYANCE ANY RECORDS DESTRUCTION PROGRAM PREVIOUSLY
APPROVED BY STATUTE OR REGULATIONS. FURTHER INSTRUCTIONS

IN THIS MATTER WILL BE ISSUED UPON RECEIPT.

- 1 - Foreign Liaison Unit (sent direct)
- 1 - Mr. Callahan (sent direct)
- 1 - Mr. Jenkins (sent direct)
- 1 - Mr. Adams (sent direct)
- 1 - Each Assistant Director (sent direct)

PFS:bpr
(19)

NOTE: Reference letter to the Director dated 1-27-75 from Hugh Scott,
Republican Leader, and Mike Mansfield, Majority Leader, United
States Senate.

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir. _____
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____
Director Sec'y _____

MAIL ROOM ☐ TELETYPE UNIT ☐

1 - Mr. J. J. McDermott
1 - Mr. W. R. Wannall
1 - Mr. F. J. Cassidy

Mr. W. R. Wannall

10/23/75

F. J. Cassidy

1 - Mr. A. F. Watters

**"DO NOT FILE" MEMORANDA
TESTIMONY CONCERNING**

Reference memorandum Mr. J. J. McDermott to Mr. Jenkins dated 10/22/75, captioned as above, concerning inquiry from Congresswoman Bella S. Abzug pertaining to files labeled "Do Not File" maintained by the FBI. The following material pertinent to the Congresswoman's inquiry has been maintained in the past in connection with matters administered by Intelligence Division (INTD):

1. One bound volume entitled "Technical Surveillances - 'Y', Log File," consisting of material dated from 3/25/42-4/18/46. This file contains results from three electronic surveillances, together with relevant administrative memoranda concerning investigation of individuals who were the subjects of a national security investigation during World War II, based upon information indicating that they may have been involved in a contemplated overthrow of the United States Government by right wing interests.

2. One bound volume, untitled, consisting of material dated from 5/10/41-8/26/44 relating to the security and trustworthiness of an individual who was then acting as a confidential source of reports relating to U. S. defense and foreign policy.

3. Two bound volumes entitled, respectively, "Blue Memoranda, 7/6/40 to 7/31/43" and "Blue and Pink Memoranda, 8/1/43 to 4/19/46." The two volumes contain miscellaneous informative and summary-type memoranda concerning war-related developments, including a briefing on the progress of the war, cooperation with the military and other U. S. agencies, important investigative developments, and internal administrative problems.

AFW:lfj
(5)

CONTINUED - OVER

Greenberg/Gray-2719

Memorandum to Mr. W. R. Wannall
Re: "Do Not File" Memoranda
Testimony Concerning

The material described above is maintained in the Special File Room of the Files and Communications Division at FBI Headquarters. Access to material maintained in the Special File Room is controlled by the Special Agent supervisor in charge of this facility and granted on a need-to-know basis to appropriate FBIHQ Special Agent supervisory personnel. In the past these materials were maintained in the offices of the Assistant Director of the Division now designated as the INTD who controlled access.

We are unable to identify all individuals who may have had access to or distribution from these records over the years, since we have not utilized an audit mechanism suitable for the preparation of such a list.

ACTION:

None. For the Information of the Files and Communications Division.

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Jenkins

DATE: 10-22-75

FROM : J. J. McDermott

SUBJECT: "DO NOT FILE" MEMORANDA
TESTIMONY CONCERNING

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____
Director Sec'y _____

As you are aware, I am scheduled to testify before the House Subcommittee on Government Information and Individual Rights of the House Committee on Government Operations on 10-28-75 at 10 a. m. In her letter to Director Kelley of 10-17-75, Chairwoman Bella S. Abzug made specific and detailed inquiry concerning the "Do Not File" system of memoranda preparation.

As best can now be determined, the "Do Not File" memoranda system originated in 1941 or earlier with the full approval of Director Hoover and the Executives Conference as a means of preventing official files being cluttered up with documents of only temporary value. Originally, a color-code system was used whereby pink or blue paper was used so that this type of document would be more readily identified. This practice continued until 1950 when instructions concerning the preparation of "Do Not File" memoranda were removed from the Bureau Supervisors Manual. Since that time, to a greater or lesser degree, personal notes or informal memoranda have been transmitted among Bureau officials which were never intended by the author for permanent retention in our filing system. These occasionally also were labeled "Do Not File."

In light of the foregoing, the following request of Chairwoman Abzug has been received:

"Please set forth the past and present physical location of each such "Do Not File" file, whether or not presently in the possession of the FBI, a description of the past and present contents of each, a list of all individuals who have had or controlled access to and distribution from these files."

- 1 - Mr. Jenkins
- 1 - Mr. Adams
- 1 - Mr. Callahan
- 1 - Each Assistant Director

JJMcD:bpr
(18)

CH 38

OCT-24

116758-1

REC-114

5 OCT 30 1975

57 OCT 31 1975

CONTINUED - OVER

Greenberg/Gray-2721

Memo McDermott to Jenkins
Re: "Do Not File" Memoranda
Testimony Concerning

ACTION:

To permit preparation of testimony, each division head or that official acting for him should furnish to me by close of business Thursday, 10-23-75, a memorandum responsive to that inquiry. If the response is to be negative, a memorandum stating that there is not known to be maintained in that division any volume(s) of material labeled "Do Not File." This request is not to be confused with tickler retention practices.

Retain entire file
in Sp. File Rm.
per Mr. McDermott
(see serial 2 also) 10/31/75
43

INQUIRY INTO THE DESTRUCTION OF FORMER FBI
DIRECTOR J. EDGAR HOOVER'S FILES AND
FBI RECORDKEEPING

HEARING
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS
FIRST SESSION

DECEMBER 1, 1975

Printed for the use of the Committee on Government Operations



Greenberg/Gray-2723

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1975

64-021 O

Stwe
Rm - 5674

matter completely. This is a matter of efficient recordkeeping, and we like to keep correspondence relating to the same correspondent in the same file. It's just efficient records management.

Mr. JACOBS. Does the nature of the file affect the disposition of the freedom of information request?

Mr. McDERMOTT. Would you restate that?

Mr. JACOBS. Does the nature of the file on the person making the freedom of information request affect the FBI's disposition of his request?

Mr. McDERMOTT. Absolutely not. We are governed by the terms of the act.

Mr. JACOBS. I would like to point out for the record that in a deposition of Richard C. Dennis, Jr., who is a special agent with the freedom of information unit, taken in the case of Weinstein against Saxbe, Mr. Dennis testified that the file check is made and that the nature of the file on the individual does affect the disposition of the freedom of information request.

Mr. Chairman, I will reserve any further questions for written request.

Mr. McDERMOTT. I would like to have the record cleared on that last point. I have Mr. Dennis here, and I would like to consult with him briefly.

I've consulted with Mr. Dennis, who is the affiant in that matter. He tells me that if he did in fact say in this long deposition that the contents of our file references would influence in any manner the manner in which we would respond to the FOIA request, that would have been a misstatement and a mistake on his part. He has supported the position that I have just given you that in no manner would the prior references maintained in Bureau files influence the nature of the substantive data that would be furnished to a requester under either the Privacy or the Freedom of Information Act.

I don't think I can make that more clear.

Mr. MAGUIRE. Thank you.

Let me ask one additional question.

Is there anywhere in the FBI Building a file that contains master copies or one file copy, or what have you, of the "No File Systems Communications"?

Mr. McDERMOTT. No. We did a search of that matter. We could find no instructions of any relevance beyond the ones which I alluded to in my prepared statement. Am I being responsive?

Mr. MAGUIRE. There is no such file in the extra-secure room?

Mr. McDERMOTT. We do have one now. It's not a file containing the instructions on the "Do not file" procedure; but anticipating the question of the committee, I did cause an inquiry to be made of all of our headquarter's divisions, and I did find that there were four volumes maintained in the Intelligence Division which had been labeled "Do not file." They referred to substantive matters which, of course, I'm not at liberty to discuss here, but only spanning the period of 1942 to 1946.

Why they were maintained in the Intelligence Division and at whose original instructions, I have no idea.

But, the Division has been headed up by a number of Assistant Directors since 1946 and apparently string saving is the only possible explanation. It was just maintained.

Greenberg/Gray-2724

(11) Notations on yellow

When appropriate, file copy of outgoing correspondence should include notation indicating either that there is no record in Bureau files relating to correspondent or summarizing available data.

(12) Special tags on outgoing mail

Special tags should be used only on mail of urgent nature. When an employee places a special tag on outgoing communication, he should initial and date tag.

(13) Rewrites

When a letter has been rewritten by someone other than original dictator, copy of rewritten letter should be designated for person who prepared original correspondence.

(14) Ticklers on correspondence

Supervisors should retain tickler copies of correspondence for 60 days, so that they can be readily located when called for. To maintain tickler for more than 60 days, approval of appropriate Assistant Director must be obtained. Periodically each Division will review its practices re preparation of ticklers, checking with recipients and eliminating those where there is no demonstrable need.

(15) Correspondence from publishers, editors, etc.

When correspondence is received from publishers, editors, journalists, or anyone in the writing field, the correspondence shall be discussed with the appropriate officials of the External Affairs Division before a reply is prepared.

(16) Correspondence dealing with public relations

Correspondence dealing with public relations and any correspondence which does not easily fall within a particular investigative classification will be prepared in the Correspondence and Tours Section. Such letters should be sent by routing slip to the chief of the Correspondence and Tours Section.

(17) Letters of commendation

Letters of commendation to Special Agents should be prepared in the [Finance and Personnel] Division. Letters of commendation to law enforcement officers and others outside the FBI should be prepared in the Correspondence and Tours Section. FBI National Academy mail is prepared in the Training Division.

REVISION 225

8/23/76

Greenberg/Gray-2726

(g) Letters to State Department must be in duplicate except as follows:

1. When letter is prepared for personal signature of Director, only original is required.
2. Letters requesting investigation shall include sufficient copies to cover various localities in which inquiry is desired.
3. Letters to Passport Office requesting issuance of passports to FBI employees should be transmitted in quadruplicate.

(h) Copies of original material prepared at FBIHQ.

1. Number of copies prepared, including original, should be shown underneath initials of dictator.
2. If additional copies are made following first run, notation shall be made on either original or file copy so indicating.

(i) Copies of letters addressed to Department of Justice officials should not be disseminated to other Government agencies.

(j) Copies of correspondence dealing with proposed or pending measures in Congress, Members of Congress, Congressional staff personnel, Congressional committees or any Congressional activity should be designated for Office of Congressional Affairs. Copies of any pertinent incoming communications should be attached.

Memoranda recommending action by Office of Congressional Affairs and outgoing communications concerning our dealings with Congress or affecting legislation in which FBI has interest, should be routed through Office of Congressional Affairs.

In replying to Department's request for FBI views on a legislative item, note which division of Department is designated as "Reporting Division." Direct reply to that division, original and one copy. Add one yellow copy, unblocked, designated at bottom for "Department files" and one white copy designated at bottom for "Legislative Section, Office of Deputy Attorney General." No initials, stamp, or other Bureau marking should appear on any of these documents. Original and all copies for Department should be stapled together.

(k) If copy of communication addressed to another Government agency is to be sent to Department, carbon copy notation for Department is to be listed, along with other dissemination, on the original and all copies unless, in opinion of dictator, such listing is not appropriate.

(l) When advising field that files at Bureau are being consolidated, designate tickler copy of communication for Consolidation Unit, Records[Branch.]

Greenberg/Gray-2727

AT0007 3311830

PP HQ

DE AT

P 271816Z NOV 78

FM ATLANTA

TO DIRECTOR (PRIORITY)

BT,

UNCLAS

ATTENTION: SUPERVISOR [REDACTED] ROOM 6888.

SURREPTITIOUS ENTRY.

REFERENCE BUREAU TELETYPE TO ALL SACS, JANUARY 1, 1976,
AND TELEPHONE CALL TO SAC, ATLANTA, FROM SUPERVISOR [REDACTED]
NOVEMBER 24, 1978.

FORMER ASSISTANT DIRECTOR THOMAS W. LEAVITT, NOW EMPLOYED
AS CORPORATE SECURITY REPRESENTATIVE, DELTA AIR LINES, INC.,
ATLANTA, GEORGIA, INTERVIEWED NOVEMBER 27, 1978, BY SA

[REDACTED] COPY OF RETEL DISPLAYED TO MR. LEAVITT.

HE ADVISED HE HAS NO CURRENT RECOLLECTION OF THIS TELETYPE.

HE STATED THAT IF HE HAD SEEN IT, THAT IF ADMINISTRATIVELY

ALL EMPLOYEES WERE TO BE ADVISED OF THE CONTENTS OF THE 11 JUN 12 1979
TELETYPE, HE WOULD HAVE ROUTED HIS TICKLER TO THE SECTION
CHIEFS IN DIVISION FIVE WITH INSTRUCTIONS TO ADVISE ALL
EMPLOYEES.

N

27 Nov 78 18 35z

RECEIVED
FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

Assoc. Dir.	
Dep. AD Adm.	
Dep. AD Inv.	
Asst. Dir.:	
Adm. Serv.	
Crim. Inv.	
Ident.	
Intell.	
Laboratory	
Legal Coun.	
Plan. & Insp.	
Rec. Mgnt.	
Tech. Servs.	
Training	
Public Affs. Off.	
Telephone Rm.	
Director's Sec'y	

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Km 6888

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REC-114

62-118045

103X

62-118045

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53 JUN 13 1979

PAGE TWO AT 66-2205 UNCLAS

HE DOES NOT BELIEVE THAT THE TELETYPE WOULD HAVE BEEN PREPARED IN DIVISION FIVE. SINCE HE HAS NO CURRENT RECOLLECTION OF THE TELETYPE, HE CANNOT STATE WHETHER OR NOT HE ROUTED IT TO SUPERVISOR [REDACTED] HE STATED THAT IF HE FELT [REDACTED] NEEDED TO SEE THE TELETYPE OR TAKE SOME ACTION ON IT, HE WOULD HAVE ROUTED THE TELETYPE TO [REDACTED] SECTION CHIEF IN ORDER THAT THIS INDIVIDUAL COULD BE APPRISED OF WHAT HIS PEOPLE MIGHT BE DOING. LEAVITT STATED HE HAS NO RECOLLECTION OF EVER SUGGESTING TO ASSISTANT DIRECTOR JJOHN A. MINTZ THAT THE YELLOW COPY OF THE TELETYPE CONTAIN THE NOTATION "TICKLERS FOR INFOORMATION ONLY CAN BE DESTROYED." LATTER QUESTION REGARDING NOTATION ON YELLOW COPY OF RETEL ASKED OF MR. LEAVITT BY SAC JAMES J. DUNN, JR.

BT

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**Memorandum**

Assoc. Dir. _____
 Dep. AD Adm. _____
~~Dep. AD Inv.~~ _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. ☒ _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

TO : The Director

DATE: 11-29-78

FROM : Legal Counsel *Jam*SUBJECT: UNITED STATES v. GRAY, et als

O L. Patrick III 78
Wash. DC 19

At 2:10 p. m. on November 28, [] retired, formerly an inspector in the Intelligence Division, called me and said that he has been requested to appear as a witness in captioned criminal prosecution on Wednesday, November 29, at 9:30 a. m. [] said that he will appear as requested but he first wanted to notify the Bureau for such action as may be necessary or appropriate.

COPY RETAINED IN
PERSONNEL RECORDS UNIT

I told [] that he would still be bound by his employment agreement even though he is now retired but that he could consider the conditions of the employment agreement waived for the limited purpose of his testimony in captioned case. I told him that I would prepare a memorandum for Bureau files recording the fact of his limited release from the employment agreement.

RECOMMENDATION:

For information.

APPROVED: *JAN*

Director

Assoc. Dir.

Dep. AD Adm.

Dep. AD Inv.

Adm. Serv. _____

Crim. Inv. _____

Ident. _____

Intell. _____

Laboratory _____

Legal Coun. *Jam*

Plan. & Insp. _____

Rec. Mgnt. _____

Tech. Servs. _____

Training _____

Public Affs. Off. _____

ST-113

DE-78

REC-89

62-118045-104

1 - []

1 - Mr. Mintz

1 - Personnel file of [] (out-of-service)

JAM:bpr

(4)

9 DEC 5 1978

XEROX
 JAN 8 1979



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RR HQ

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R 270139Z NOV 78

FM COLUMBIA (62-NEW)

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FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

Assoc. Dir.	_____
Dep. AD Adm.	_____
Dep. AD Inv.	_____
Asst. Dir.:	_____
Adm. Serv.	_____
Crim. Inv.	_____
Ident.	_____
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Rec. Mgnt.	_____
Tech. Servs.	_____
Training	_____
Public Affs. Off.	_____
Telephone Rm.	_____
Director's Sec'y	_____

TO DIRECTOR (62-118045) ROUTINE

ATTENTION [REDACTED] ROOM 6888, JEH

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BT

UNCLAS

U.S. VS L. PATRICK GRAY, III; ET AL

RE YOUR TELEPHONE CALL NOVEMBER 27, 1978.

FORMER SPECIAL AGENT OF THE FBI [REDACTED]

[REDACTED] COLUMBIA, S.C., ADVISED THAT HE WAS UNIT CHIEF OF THE UNIT RESPONSIBLE FOR THE INVESTIGATION OF VIET NAM VETERANS AGAINST THE WAR. DURING 1976, CERTAIN TICKLER COPIES CONCERNING THIS ORGANIZATION WERE SEIZED BY THE DEPARTMENT OF JUSTICE. THEY WERE SUBSEQUENTLY RETURNED TO THE FBI, BUT BEFORE THAT TIME, THE INVESTIGATION HAD BEEN ASSIGNED TO ANOTHER UNIT WHICH [REDACTED] COULD NOT SPECIFICALLY RECALL. TO HIS KNOWLEDGE, THESE WERE TRUE TICKLER COPIES; THAT IS, THERE WERE ORIGINALS IN THE FILE ITSELF. [REDACTED]

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REC-126

62-118045-105

23 DEC 13 1978

79 DEC 21 1978

Greenberg/Gray-2731

CO 62-NEW PAGE TWO ROUTINE

SAID THAT PERHAPS SA [REDACTED] AT FBIHQ, COULD RECALL
THE UNIT IN QUESTION. AS TO TICKLER COPIES OF CAPBOM
MATERIAL, THEY WERE NEVER MAINTAINED IN HIS UNIT TO THE BEST
OF HIS RECOLLECTION AND HE FELT THAT FORMER SPECIAL AGENTS
[REDACTED] MIGHT BE ABLE TO SHED
SOME LIGHT ON THE DISPOSITION OF THESE TICKLERS.

BT

#

Francis J. Martin
Criminal Division

FEDERAL GOVERNMENT

11-28-78

[REDACTED]
Federal Bureau of Investigation

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U. S. vs. L. PATRICK GRAY III, ET AL

In response to your memorandum of November 20, 1978, and in particular, Part C captioned "Content of Files," I am enclosing FD-302, concerning the interviews of [REDACTED]

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On November 27, 1978, you asked that [REDACTED] Secretary to the Assistant Director of the Intelligence Division, be interviewed in an effort to determine the contents of one of the missing folders captioned "Surreptitious Entry." [REDACTED] was contacted by me on November 27, 1978, and she advised she was unable to furnish any details concerning the contents of that folder. She checked her records and advised that this particular folder was initially taken by FBI Agents under the direction of the Department in August 1976 and then returned. It was taken a second time on October 21, 1976. This time it was taken by SA [REDACTED] [REDACTED] furnished a receipt signed by SA [REDACTED] showing that [REDACTED] had picked up this particular folder on October 21, 1976. Enclosed is a copy of that receipt.

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Also enclosed per your request of November 27, 1978, is a typed copy of an inventory of material furnished to SA [REDACTED] of FBI Headquarters on January 22, 1978 by former Section Chief Robert L. Shackelford.

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As requested by you on November 27, 1978, former SA [REDACTED] was interviewed by SA [REDACTED] in Columbia, South Carolina, and was unable to describe the contents of the tickler folders captioned "Vietnam Veterans Against the War" or "CAPBOM." [REDACTED] recalled the "Vietnam Veterans Against the War" folders being returned to another Unit after their seizure by the Department but could

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cc. Dir. _____
AD Adm. _____
AD Inv. _____
Dir. _____
Servs. _____
Inv. _____

Enclosures

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - Mr. Bassett
- 1 - [REDACTED]

ENCLOSURE

ENCLOSURE ATTACHED

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PVD:ddr

MAIL ROOM

79 DEC 20 1978

DEC 13 1978

Francis J. Martin

not recall to which Unit they were returned. Insofar as the content of these folders to Schroeder's knowledge, they contain copies of correspondence which was already in file. As to the content of the "CAPBOM" folders, he could furnish no information and had no recollection of having possession of these folders in his Unit.

APPROVED:

Director _____
Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____

Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____

Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____

les of FD-302's
Hand delivered
to Dept. 11/28/78 RD

Greenberg/Gray-2734

FEDERAL BUREAU OF INVESTIGATION

11-28-78

Date of transcription

[redacted] GS-9, assigned to the Technical Services Division, FBI Headquarters, was advised of the official identities of Special Agents [redacted] and the nature of the inquiry which was being conducted to ascertain the details surrounding the custody and control of the contents of cabinets that were seized in FBI Headquarters space during August, 1976, in connection with the Surreptitious Entry Inquiry. b6 b7C

[redacted] advised as follows: b6 b7C

He was assigned to the Surreptitious Entry Inquiry task force from June, 1976, to January, 1977, as the clerical coordinator. Other clerks assigned to the task force were: [redacted] who has resigned, [redacted] [redacted] who has also resigned. b6 b7C

Agents assigned to the task force who often supervised the activities of the clerks were Special Agents [redacted] and [redacted] with Special Agent [redacted] being the primary supervisor, although there were no clear lines of supervision to the best of his recollection since he often had to obtain administrative decisions from whomever was present. b6 b7C

He accompanied seizure teams on August 19, 1976, when the first seizure of pertinent cabinets was made. He was present in Special Agent [redacted] office and in the Division Front Office when cabinets were seized there. He recalls that the general contents of seized cabinet drawers were inventoried on the spot, in the presence of those occupying the same office space as the cabinets, although no receipts were exchanged at that time. The cabinets were then removed to the task force office space on the seventh floor of FBI Headquarters where they remained until the contents were reviewed by Agent personnel. b6 b7C

Upon arrival in the task force office space, the pertinent cabinets, total number not recalled, were identified by affixing a pressure-sensitive label approximately 1 1/4 inches by 3 1/2 inches with a 1/8-inch colored stripe at the top and upon this label was written a numeral, such as "1." While in the task force office space and prior to being returned to the spaces from which they were obtained, the contents of each cabinet were inventoried by copying the title of each folder in each drawer. No document-by-document inventory was made.

Investigation on 11-27-78 at Washington, D. C. File #
by SAs [redacted] DJC:jml Date dictated 11-28-78 b6 b7C

The cabinets, with contents, were returned to the original custodians when one of the above-named Special Agents or some other Agent indicated that the review had been completed. This was done as quickly as possible since persons were requesting information contained in the folders on a continuing basis. Although he did not accompany any of the cabinets when returned, he does not recall that a receipt was obtained from the original custodian. He recalls hearing of no questions being asked by original custodians with regard to the future disposition of the material being returned. He recalled no log being maintained which indicated the exact room or person to whom the cabinets were returned.

He recalled that all material from the seized cabinets was reviewed by Agents who identified that material thought to be substantively responsive to the U.S. Department of Justice needs and that material so identified was copied for dissemination to the U.S. Department of Justice.

He could furnish no information which might explain why or how some folders, originally inventoried, might now be unavailable.

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11-28-78

[redacted] GS-6, assigned to the Records Management Division, FBI Headquarters, was advised of the official identities of Special Agents [redacted] and the nature of the inquiry which was being conducted to ascertain the details surrounding the custody and control of the contents of cabinets that were seized in FBI Headquarters space during August, 1976, in connection with the Surreptitious Entry Inquiry. b6 b7C

[redacted] advised as follows: b6 b7C

He was assigned to the Surreptitious Entry Inquiry task force during the latter part of June, 1976, until January, 1977, and from June, 1977, until approximately May, 1978, where he served in a clerical capacity under the general direction of [redacted] was assigned. Other clerks assigned to the task force were [redacted] b6 b7C

~~Although he did not accompany the teams that accomplished the initial seizure of cabinets during August, 1976, he was present in the task force office space when the cabinets were inventoried by [redacted] and himself immediately upon their arrival in that space. The inventory was accomplished by copying the titles of each folder in each drawer. No document-by-document inventory was made. The cabinets were identified by placing a 3-inch-by-5-inch card on each and by writing a numeral such as "1" on the card. The inventory was directed by [redacted] who received instructions from one of the Agents present. The seized cabinets were maintained in the center of the task force office space.~~ b6 b7C

After approximately two weeks movers came to the task force office and removed the seized cabinets, presumably to return them to the original custodians, although he recalled no specific instructions in that regard or any second inventory conducted just prior to the removal of the cabinets. He did not accompany the cabinets being returned and recalled no specific person who directed that operation.

The Agents most likely to have been involved in the removal and return of the cabinets were Special Agents [redacted] and possibly Special Agent [redacted] although he recalled no specific instructions being issued with regard to the final disposition of the seized cabinets. He assumed the cabinets were being returned since the Agents had completed a review of the drawer contents and had received approval for their return from the U.S. Department of Justice. He believed that all the cabinets b6 b7C

Investigation on 11-27-78 at Washington, D. C. File #
by SAs [redacted] DJC:jml Date dictated 11-28-78 b6 b7C

were returned at about the same time since the empty space in the middle of the office became very obvious.

He recalled a second task force seizure of material during October, 1976, when he, [redacted] accompanied Special Agent [redacted] and attempted to retrieve specific folders from material originally seized during August, 1976, and subsequently returned by the task force to the original custodians. He believes he may have been able to find only about fifty percent of the specific folders being sought at that time.

He could furnish no information which might explain why or how some folders originally inventoried during August, 1976, might now be unavailable.

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/28/78

[redacted] Unit Chief, Substantive and Civil Disorders Unit, Terrorist Section, Criminal Investigative Division, Room 4084, J. Edgar Hoover Building, was interviewed concerning tickler folders seized in August 1976 in connection with the "surreptitious entries" inquiry being conducted at that time by the U. S. Department of Justice. [redacted] advised as follows:

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In approximately November 1976 during a reorganization of the Terrorist Section within the Criminal Investigative Division, the "Weathermen and Related Matters" were reassigned to his unit under the supervision of [redacted] indicated that [redacted] had been the prior Unit Chief in charge of the Weathermen and that in the reorganization [redacted] was reassigned to the Bombing Unit of the Terrorist Section. [redacted] noted that [redacted] was assigned this area of supervision until February 1978 when he was moved to his current assignment in the Document Classification Unit, Records Management Division, and succeeded by [redacted]

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[redacted] noted that because of changes in investigative guidelines, the prime concern with the Weathermen, at the time they were transferred to his unit, was with informants and undercover Agent activities. [redacted] said files in this specific area of concern were maintained in one of the eight to ten cabinets which were forwarded from the Weathermen Unit. He noted these cabinets are currently stored in Room 4051 and that they contained tickler folders on Weathermen. [redacted] stated that when these cabinets were initially received in November 1976, they were placed in Room 4077 but because of subsequent reorganizations, they were moved to Rooms 4047 and 4049 prior to their final move to Room 4051.

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[redacted] stated that many of the tickler folders from the old Weathermen Unit were of little value because of changes in the Bureau's investigative guidelines. He sought to get rid of those ticklers of no use or value through a review by his supervisory personnel. As of this time, he does not feel any of the tickler folders were destroyed but that only outdated duplicate copies of Weathermen newspapers were thrown out.

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Investigation on 11/27/78 at Washington, D. C. File # _____
by [redacted] b6
b7C Date dictated 11/28/78

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[] noted that he had never made a document-by-document inventory of cabinets at the time they were transferred to his unit, but had made a rough outline of the contents which he cannot now locate. [] could furnish no information which might explain why or how some folders inventoried during August 1976 might now be unavailable.

Greenberg/Gray-2740

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/28/78

[redacted] Unit Chief, Projects Unit, Document Classification and Review Section, Records Management Division, Room 3565, J. Edgar Hoover Building, was interviewed concerning tickler folders seized in August 1976 in connection with the "surreptitious entries" inquiry being conducted at that time by the U. S. Department of Justice. [redacted] advised as follows:

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On approximately August 23, 1976, [redacted] indicated he replaced [redacted] as Unit Chief of the Weathermen Unit, maintaining his office in Room 4427. [redacted] noted that this was approximately one week after the seizure in question. [redacted] said he held this position until approximately November 1976 when he was reassigned to the Bombing Unit in the Criminal Investigative Division and the Weathermen matters were transferred to [redacted] [redacted] Unit Chief of the Substantive and Civil Disorders Unit.

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[redacted] recalled that after he took over from [redacted] many of the seized cabinets were returned to the Unit. He cannot state that all of the original material was returned as he possessed no inventory of that material taken. Sometime after taking over the Unit from [redacted] recalled being given an inventory of the material that was seized and when he would need one of the tickler folders, he would refer to this list and then request the desired folder from the Department of Justice Task Force. He could not recall where this inventory might be located, but believed it had been filed in one of the cabinets from his office which was forwarded on when the Weathermen matters were reassigned.

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[redacted] could not furnish any information which might explain why or how some folders inventoried during August 1976 might now be unavailable.

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b7CInvestigation on 11/28/78 at Washington, D. C.

File #

by

b6
b7CDate dictated 11/28/78

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/28/78

[redacted] Unit Chief, Review Unit, Document Classification and Review Section, Records Management Division, Room 5431, J. Edgar Hoover Building, was interviewed concerning tickler folders seized in August 1976 in connection with the "surreptitious entries" inquiry being conducted at that time by the U. S. Department of Justice. [redacted] advised as follows:

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In November 1976 during a reorganization of the Terrorist Section within the Criminal Investigative Division, he was reassigned the "Weathermen and Related Matters" with [redacted] the Unit Chief in the Substantive and Civil Disorders Unit. [redacted] indicated that [redacted] had been the prior Unit Chief in charge of the Weathermen and that [redacted] was then reassigned to the Bombing Unit. [redacted] was assigned this area of supervision until approximately February 1978 when he was moved to his current assignment and was succeeded by [redacted]. During the period he handled the Weathermen, [redacted] noted his primary concerns were undercover Agent activities and informants. He maintained the files on these activities in one of the cabinets obtained from the Weathermen Unit which were stored in Rooms 4047 and 4049. [redacted] said this cabinet was one of approximately ten cabinets stored in these rooms which had been forwarded from the old Weathermen Unit. He indicated that the majority of these cabinets contained tickler folders on Weathermen matters but were of no value at the time because of the new investigative guidelines.

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[redacted] noted that during the time that he supervised the Weathermen activities, he had never inventoried the cabinets or reviewed the tickler folders for their full content or value. [redacted] stated that on one occasion he did throw out old copies of the Weathermen paper "Osowatomie," which had filled approximately one cabinet drawer. He indicated that he had thrown this material out as it had no apparent value and many were duplicate copies.

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[redacted] stated that he did not destroy any individual tickler folders or their contents stored in Rooms 4047 and 4049.

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Investigation on 11/28/78 at Washington, D. C. File # _____
by [redacted] Date dictated 11/28/78

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[] stated that during the time the Weathermen cabinets were in his unit, there was constant access by Bureau employees to this material, as someone was always seeking to review the material for one inquiry or another.

He could furnish no information which explained why or how some folders inventoried during August 1976 might now be unavailable.

FEDERAL BUREAU OF INVESTIGATION

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DATE 02-28-2009 BY 65179 dmh/baw/sps

Date of transcription 11/27/78

[redacted] was advised of the identities of the interviewing Agents and of the nature of the inquiry. She stated that she is presently the secretary for Thomas Bresson, Section Chief, Disclosure Section, Freedom of Information/Privacy Act Branch and has been in this position since September, 1976. Prior to that, she was the secretary for Robert L. Shackelford, Section Chief, Internal Security (IS) Squad 2.

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[redacted] advised that, on 8/19/76, various documents or cabinets were removed from Rooms 4437, 4439, and 4439a by members of a "special" headed by Richard E. Long. She stated that the items removed from Room 4437 were removed from the cabinet in the room occupied by Robert L. Shackelford. Items removed from Room 4439 were in the room occupied by herself and [redacted] the secretary for the Assistant Section Chief and leave clerk. Items removed from the cabinet in Room 4439a were taken from the room occupied by [redacted] was shown a list of items taken from drawer 2 of cabinet 1. After viewing this list, she identified the items listed as items contained in the cabinet in Room 4439, occupied by herself and [redacted]. She identified the items on this list marked with the letter "D" as those that were personally destroyed by herself. She identified the other items on the list as having been transferred to other offices within Bureau Headquarters. [redacted] stated these files were destroyed or transferred to other areas due to the fact that her section, IS-2, was in the process of being dissolved at that time. She advised that all the files destroyed by her were files of an administrative nature used for information only by Mr. Shackelford and contained items of information which he thought would be necessary for the administration of his duties. She advised that she did not feel that any of the items that she destroyed should have been retained since the section was in the process of being abolished. She stated that any items which she felt would be of value were transferred to the various offices as noted on the forms shown to her.

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b7CInvestigation on 11/27/78 at Washington, D. C. File # _____by SA [redacted] Date dictated 11/27/78b6
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This document contains neither recommendations nor conclusions of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

ENCLOSURE

62-118045-106

[redacted] was shown a list of items noted in Department of Justice (DOJ) File 14 taken from Drawers 1 and 2 of File Cabinet 10. She stated that to the best of her recollection these items were located in Shackelford's cabinet in Room 4437. She stated that she is certain she destroyed the six items marked "destroy" on this form (items marked from Extremist - East Unit through Security Informant Unit). She advised that with the exception of the six items she personally destroyed, she believes that Shackelford went through the remaining files listed on these pages. She stated that Shackelford told her to get the boys and have them put these files in a bag for destruction. She stated she had clerks [redacted] and [redacted] come and do this. She advised that [redacted] has since resigned and moved to the State of Indiana. She also advised that she had no idea as to the specific contents in these files.

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[redacted] was also shown a list of items from DOJ File 17 taken from Drawers 1 and 2 of Cabinet 15. After viewing the items listed, she stated she believed most of the items belonged to the cabinet of [redacted] in Room 4439a; however, some of the items might possibly have been in the possession of Shackelford. She stated that to the best of her recollection she was not responsible for the destruction of any items noted in the above pages. She advised that she had no idea as to the specific contents in these files.

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[redacted] was shown two pages of field supervision files taken from cabinet 1, drawer 1. She stated that these files were kept regarding all field offices. They were kept in the event a field office was not following specific Bureau procedures during an investigation, the Bureau supervisor handling the investigation would place a memorandum in the file. She stated that the original was sent to the field office, the yellow copy was retained in the case file and a true tickler copy was placed in these folders. [redacted] advised that other than this general description with which she was familiar, she knows nothing of the specific contents of these files regarding specific field offices. She stated that these files would either have been destroyed or transferred to the Extremist Section headed by Joseph Deegan.

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[] was shown a list of items taken from Cabinet 1, Drawer 5 from Shackelford's office. She advised that these contained Bureau memoranda and SAC memoranda which she destroyed due to the abolition of IS-2. She stated that each Front Office had a set of these and therefore since her section was being dissolved, she saw no need to maintain these.

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[] was then shown items contained on pages which she stated were the property of [] and that she therefore would have no knowledge of them.

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[] advised that she could furnish no additional information which might be of assistance to this investigation.

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4439

MYSCELLANEOUS

<u>DOJ</u> <u>file #</u>	<u>Div. 5</u> <u>file #</u>	<u>Drawer</u>	<u>Contents in Drawer</u>
(14)	10	1	Policy - Manual Revisions Proposed Revision, Title 18, U. S. Code Testimony Before HCIS - 6/4/74 Policy Jurisdiction Intelligence Division Position Paper on Jurisdiction Position Paper Domestic Intelligence Div Scope of FBI Authority, Jurisdiction & Responsibility in Domestic Intelligence Investigations FBI Jurisdiction Folder (Blank Paper)

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DATE 02-28-2009 BY 65179 dmh/baw/sbs

Greenberg/Gray-2747

INVESTIGATIONS

<u>DOJ file #</u>	<u>Div. 5 file #</u>	<u>Drawer</u>	<u>Contents in Drawer</u>
14	10	2	ECCSL File [redacted] File [redacted] File Letter file with News Clippings Memorandum to Miller from Schackelford SWP Law Suit Attorney General Guidelines Section Manpower - 1973 Section Manpower, Vol. 1 Unlabelled file containing letter Extremist - East Unit Trotskyist Unit Extremist - Midwest Unit Extremist - West Unit Communist Party Unit Security Informant Unit Top Ten New Left Fugitives II [redacted] Etal (NET) Movement Research Project VVAW Trial Summary Cointelpro - CPUSA Cointelpro - SWP Cointelpro - NF (Suit) Penal Symposium V. B. Special Report Writing - Change New Left Leader President's Commission on Campus Unrest Cointelpro Executive Management Symposiims Director's Testimony Domestic Councils Committee on Privacy Committee Re Gathering and Retention Intelligence Community Task Force Project 10, Vol 1 Project 10, Vol 2 DDCI Computer School Policy - Dept. Investigative Guidelines

destroyed

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DATE 02-28-2009 BY 65179 dmh/baw/sbs

Greenberg/Gray-2748

Contents in Drawer

#1

#2

- D Administrative 1973
- D Administrative 1974
- D Administrative 1975
- D Administrative 1976
- D (AUG) Administratively Uncontrollable Over
- D Agent's Dictation Ability; also Anniversar
- D Asian Flu Program
- D Censure Matters *TT*
- D Clerical Escort Duty
- D Commendation Matters

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- D Contacts by Supervision
- D Correspondence Instructions
- D Sample Correspondence File
- Internal Security Section
- Correspondence Classification Statistics
- Correspondence Matters
- Departmental Order #300-63
- Dissemination of Security Information
- D FBI Training School Schedule *lecture schedule*
- D FBIHQ Supervisors' Orientation Course
- Files Maintained in IS-2 Sec.
- Firearms
- D Flower and Gift Fund - ISS
- D Indoctrination Program - Agents and Clerks
- D In-Service Schedule
- D Inspection Matters - Field
- D Inspector's Aides
- D Inventory - New Left Section
- Itineraries
- D Mass Media
- Overtime Records
- D Performance Ratings - Clerks (Guide)
- Personnel - Agent 1973
- Personnel - Clerical 1973
- Personnel - Agent 1974
- Personnel - Clerical 1974
- Personnel - Agent 1975
- Personnel - Clerical 1975
- Personnel - Clerical 1976
- Personnel - Agent 1976
- Personnel Count

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b7Cb6
b7Cb6
b7Cb6
b7C

Drawer	Contents in Drawer
#1	<input type="checkbox"/> Promotional Availability List <input type="checkbox"/> Recreation Committee <input type="checkbox"/> Responsibilities of SICs <input type="checkbox"/> Retirement Receptions <input type="checkbox"/> Routing of Mail <input type="checkbox"/> Savings Bonds Transmittal Slips <input type="checkbox"/> Security Indoctrination of Employees <input type="checkbox"/> Secure Phone Directory <input type="checkbox"/> Extra Duty Supervisors Instructions <input type="checkbox"/> Semi-Annual Clerical Conferences <input type="checkbox"/> Steno's Weekend, Holiday, Late Duty Sch. <input type="checkbox"/> Stenographer's Reports <input type="checkbox"/> Suggestions - Streamlining <input type="checkbox"/> Tour Leaders
#2	<input type="checkbox"/> Inspection Material 1967 - Inspection, 2/20 - 3/10/67 1968 - Inspection, 2/12 - 2/28/68 1969 - Inspection, 5/1/69 - 5/14/69 <input type="checkbox"/> Inspection - 1971 <input type="checkbox"/> Inspection - August, 1971 <input type="checkbox"/> Inspection - August, 1972 <input type="checkbox"/> Inspection - October, 1973 <input type="checkbox"/> Inspection - IS-2 Section 1975

b6
b7C

b6
b7C

Inspection Material

1967 - Inspection, 2/20 - 3/10/67
 1968 - Inspection, 2/12 - 2/28/68
 1969 - Inspection, 5/1/69 - 5/14/69
☐ Inspection - 1971
☐ Inspection - August, 1971
☐ Inspection - August, 1972
☐ Inspection - October, 1973
☐ Inspection - IS-2 Section 1975

b6
b7C

Room 9439

POLICY

<u>DOJ</u> <u>file #</u>	<u>Div. 5</u> <u>file #</u>	<u>Drawer</u>	<u>Contents in Drawer</u>
17	15	1	Accomplishments "Adex" 1972 Fiscal Year Annual Report 1973 Annual Report 1974 Annual Report 1975 Annual Report Annual Report 1976 AG Briefing Material Attacks on FBI Bank Matters Briefing Book Characterizations Cointelpro--CPUSA Cointelpro--New Left Cointelpro--SWP Civil Disorders Classification Congressional Inquiries Constitutional Oath Support Act Cox Committee Cox Requests Demonstration Policy Department Opinions Dissemination East Con Elsurs EO 10450 Equal Employment Opportunity False ID Field Inspections Freedom of Information Act 5-Year Projected Equipment Needs Fugitives Graylet HCIS Hearings Indexing Informant Payments Informants - Policy Intelligence Oversight Board Investigative Guidelines IRS Investigation of New Left

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CONTINUED -- OVER

Greenberg/Gray-2751

Drawer #1 Contd
RE: Policy

Jurisdiction
✓Kelley Requests
✓SSC Draft Report Material
✓Sensitivity Tickler
✓HSC Outgoing Responses

POLICY

<u>DOJ</u> <u>File #</u>	<u>Div. 5</u> <u>File #</u>	<u>Drawer</u>	<u>Contents in Drawer</u>
17	15	2	<ul style="list-style-type: none"> ✓ Law Suits Lecture Outlines Legislative Proposals Logan Act Mail Count Mail Cover Management by Objective Man Power Info MIDEM-MIREP Miscellaneous Projects Name Check-HCIS NATO-Write-Ups ✓ Personnel Physical Fitness Policy Predications Investigative Priorities "SACB-E011605" Section Organization ✓ Special Projects Speeches "Training" Unit Working Guides Use of Personnel ✓ Weatherfug Year Press Release

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Greenberg/Gray-2753

Desired 1976

Obtained 1977

Available 1978

Account

SHACKELFORD

~~CONFIDENTIAL~~

Cabinet #1 / Drawer #1 / Contents in Drawer

Field Supervision

- Field Supervision - Albany
- Field Supervision - Albuquerque
- Field Supervision - Alexandria
- Field Supervision - AN
- Field Supervision - Atlanta
- Field Supervision - Baltimore
- Field Supervision - Birmingham
- Field Supervision - Boston
- Field Supervision - Buffalo
- Field Supervision - Butte
- Field Supervision - Charlotte
- ✓ Field Supervision - Chicago
- Field Supervision - Cincinnati
- Field Supervision - Cleveland
- Columbia
- ✓ Field Supervision - Dallas
- Field Supervision - Denver
- Field Supervision - Detroit
- Field Supervision - El Paso
- Field Supervision - [REDACTED]
- Field Supervision - Honolulu
- Field Supervision - Houston
- Field Supervision - Indianapolis
- Field Supervision - Jackson
- Field Supervision - Jacksonville
- Field Supervision - Kansas City
- Field Supervision - Knoxville
- Field Supervision - Little Rock
- Legats - Supervision
- Field Supervision - [REDACTED]
- Administrative Checks - [REDACTED]
- Field Supervision - Las Vegas
- Field Supervision - Los Angeles
- Field Supervision - Louisville
- Field Supervision - Memphis
- Field Supervision - Miami
- Field Supervision - Milwaukee

DECLASSIFICATION AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 02-28-2009

Not FOIA exemptions

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EXEMPT FROM GDS CATEGORY 1, 4, 3
DATE OF DECLASSIFICATION INDEFINITE
this is considered a source document

Overall classification is "Confidential" as it contains information from documents so classified. Paragraphs are marked individually.

Greenberg/Gray-2754

~~CONFIDENTIAL~~

DESIRED
Cabinet #1

OBTAINED
Drawer #1

Amount
Contents in Drawer

Field Supervision - Minneapolis
Field Supervision - Mobile
Field Supervision - N. Haven
Field Supervision - New Orleans
✓ Field Supervision - Newark
✓ Field Supervision - New York
Field Supervision - Norfolk
Field Supervision - Oklahoma City
Field Supervision - Omaha
Administrative Checks - [REDACTED]
Administrative Checks - [REDACTED]
Field Supervision - Philadelphia ✓
Field Supervision - Phoenix
Field Supervision - Pittsburgh
Field Supervision - Portland
Field Supervision - Richmond
Administrative Checks - Legat, [REDACTED]
Field Supervision - Sacramento
Field Supervision - Salt Lake City
Field Supervision - San Antonio
Field Supervision - Washington Field
Field Supervision - Tampa
Field Supervision - St. Louis
Field Supervision - Springfield
Field Supervision - Seattle
Field Supervision - Savannah
Field Supervision - San Juan
Field Supervision - San Francisco
Field Supervision - San Diego

Located in back of drawer

Manual of Rules and Regulations

Manual No. 8

Manual of Instructions, Vol. I

Manual No. 7596

Manual of Instructions, Vol. IV

Manual No. 7596

Manual of Instructions, Vol. II

Manual No. 7596

Manual of Instructions, Vol III

Manual No. 7596

Not FOIA exemptions

2Greenberg/Gray-2755

Desired 1976
 Obtained 1976
 Available 1976
 Amount

SHACKELFORD

Cabinet	Drawer	Contents in Drawer
#1	#2	Administrative 1973 Administrative 1974 Administrative 1975 Administrative 1976 (AUC) Administratively Uncontrollable Overtime Agent's Dictation Ability; also Anniversaries Asian Flu Program Censure Matters ✓ Clerical Escort Duty Commendation Matters ✓ <div style="background-color: black; height: 15px; width: 100%;"></div> Contracts by Supervision ✓ Correspondence Instructions ✓ Sample Correspondence File ✓ Internal Security Section Correspondence Classification Statistics Correspondence Matters ✓ Departmental Order #300-63 Dissemination of Security Information ✓ FBI Training School Schedule ✓ FBIHQ Supervisors' Orientation Course ✓ Files Maintained in IS-2 Sec. Firearms Flower and Gift Fund - ISS Indoctrination Program - Agents and Clerks ✓ In-Service Schedule ✓ ✓ Inspection Matters - Field ✓ Inspector's Aides ✓ Inventory - New Left Section Itineraries Mass Media Overtime Records Performance Ratings - Clerks (Guide) Personnel - Agent 1973 ✓ Personnel - Clerical 1973 ✓ Personnel - Agent 1974 Personnel - Clerical 1974 Personnel - Agent 1975 Personnel - Clerical 1975 Personnel - Clerical 1976 Personnel - Agent 1976 Personnel Count

ALL INFORMATION CONTAINED
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Greenberg/Gray-2756

Desired
Cabinet*DATA*
Drawer*AVAILABLE*
Contents in Drawer

#1

#2

Promotional Availability List
 Recreation Committee
 Responsibilities of SICs
 Retirement Receptions
 Routing of Mail
 Savings Bonds Transmittal Slips
 Security Indoctrination of Employees
 Secure Phone Directory
 Extra Duty Supervisors Instructions
 Semi-Annual Clerical Conferences
 Steno's Weekend, Holiday, Late Duty Sch.
 Stenographer's Reports
 Suggestions - Streamlining
 Tour Leaders

Inspection Material

1967 - Inspection, 2/20 - 3/10/67

1968 - Inspection, 2/12 - 2/28/68

1969 - Inspection, 5/1/69 - 5/14/69

Inspection - 1971

Inspection - August, 1971

Inspection - August, 1972

Inspection - October, 1973

Inspection - IS-2 Section 1975

 Rm 4042
 SN/65370

DESIRED 1971

OBTAINED 1971

AVAILABLE 1971

Amount 0

SHACKELFORD

Cabinet #1

Drawer #5

Contents in Drawer

Memo. Bu. Officials and Super. - 1972

- ✓ Memo - Bu. Officials and Supvsrs. 1972
- ✓ Memo - Bu. Officials and Supvsrs. 1973
- ✓ Memo - Bu. Officials and Supvsrs. 1974
- ✓ Memo - Bu. Officials and Supvsrs. 1975
- ✓ Memorandum to All Employees 1972
- ✓ SAC Memorandum 1976
- ✓ SAC Memorandum 1975
- ✓ SAC Memorandum 1974
- ✓ SAC Memorandum 1973
- ✓ SAC Letters 1972
- ✓ Delinquency Report Material
- ✓ Delinquency 1976
- ✓ Delinquency 1975
- ✓ Delinquency 1974
- ✓ Delinquency 1973

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~~SECRET~~

1976
DQJ Copy 3
#4425-27

b6
b7C

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EXEMPTION CODE 25X(1)
DATE 02-28-2009

Dpawer #8 Cont'd

[REDACTED] -PSI

(Spectar)

PSI (CG)

PSI (CG)

PSI (Spectar SM-Weatherman

PSI (Spectar)

PSI (Spectar) SM:WTHM

PSI (Spectar) SM:WTHM

(Spectar)

PSI

PSI

-PSI RE Macbtinger Case NY

PSI (Spectar)

(Spectar)

-PSI (Spectar)

(Spectar SM-PFOC

(Spectar) SM-PFOC

-PSI (Spectar)

SM-Weatherman OO:SF

(Spectar) SM-WTHMAN OO:SF

(Spectar)

b1
b2
b7D

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

*SPECTAR CLOSED

[REDACTED] SM:RU

[REDACTED] Spectar

(Spectar)

-PSI (Spectar)

-PSI SM:WTHM OO:CG

-PSI (Spectar)

-PSI (Spectar)

PSI (Spectar)

(Spectar)

b2
b7D

PSI (UD) OO:LA

PSI LA (E18,V)

PSI (Spectar)

PSI (Spectar)

PSI (Spectar)

PSI (Spectar)

Former [REDACTED] (Spectar) BS

Spectar [REDACTED]

Greenberg/Gray-2759

~~SECRET~~

DESIRED 1/23
OBTAINED 1/26
AVAILABLE
AMOUNT 27

DOJ files #	Div. 5 files #	Drawer	Contents in Drawer
5	4425-8	2	BOSTON
		✓ 22	Boston Weather/Spectar
		✓ 23	Mon. Jackson-S Melville Bombings Mass.
		✓ 24	Prairie Fire Organizaing Comm. OO:BS
		✓ 25	PEOC National Convention, 7/11-13/75
		✓ 26	PEOC Outgoing Communications RE
			Nat. Conv.
			Red Dragon Print Collective 1s (BS)
			VVAL OO:BS
			[redacted] OO:BS
		✓ 27	[redacted] (BS)
			[redacted] Vol. II (BS)
		✓ 28	[redacted] (BS)
			[redacted] (BS)
			[redacted] (BS)
			[redacted] (BS)
			[redacted] OO:BS
		✓ 29	[redacted] (BS)
			[redacted] SM-W (BS) Vol. 2
			[redacted] (BS)
			[redacted] (BS)
			[redacted] (BS)
		✓ 30	[redacted] (BS)
			[redacted] OO:BS
		✓ 31	[redacted] (BS)
		✓ 32	[redacted] (BS)
		✓ 33	[redacted] (BS)
		✓ 34	[redacted] SMW (BS)
			BUFFALO
		✓ 35	Buffalo Weather/Spectar
		✓ 36	Buffalo-PEOC
		✓ 37	[redacted] D. SM-W(E) (Key Act) (
			[redacted] Vol. 2
			[redacted] Vol. 1

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Greenberg/Gray-2760

6

DESIRED 1972
OBTAINED 1976
AMOUNT

PHUSSE, ROOM 4427

DOJ
file #

Div. 5
file #

Drawer

Contents in Drawer

6

4425-2

1

Weatherfug Legats Folders

Weatherfug, [REDACTED], [REDACTED], [REDACTED]

Weatherman Album (Black Binder)

Photo

Not FOIA exemptions.

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Greenberg/Gray-2761

6

DESIRED 7/6

OBTAINED 7/6

AVAILABLE

AMOUNT

[REDACTED]

RM. 4427

b6
b7C

DOJ
file #

Div. 5
file #

Drawer

Contents in Drawer

8

4425-2

3

WIREP, Vol. I
WIREP, Vol. II
DEMNOV
MIDEM
BANK BOMB

b6
b7C

[REDACTED] -PP MATTER--REPORTS AND LHM

GILROB
WISHOM

PENBOM, 5/19/72, Vol. 2

[REDACTED] N EXP. CACHE, 9/16/71

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Greenberg/Gray-2762

DESIRED 1976
OBTAINED 1996
AVAILABLE 1998
Amount

PHOSSE, RM. 4427

DOJ file #	Div. 5 file #	Drawer	Contents in Drawer
7	4425-5	5	Five copies of Sup material from New York Office and Attorney General, volumes 44 through 47 and 49 through 65 and true copies. (Material charged out to Rm. 4427)

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Greenberg/Gray-2763

FEDERAL BUREAU OF INVESTIGATION

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DATE 02-28-2009 BY 65179 dmh/baw/sbs

Date of transcription November 27, 1978

[redacted] was advised of the identities of the interviewing Agents and of the nature of the inquiry. [redacted] stated that he is presently assigned to the Personal Property Crimes Section and is working as a Research/Analyst in the Transportation Crimes Unit. His immediate Supervisor is [redacted] currently resides at [redacted] Annandale, Virginia, telephone number [redacted]

b6
b7C

[redacted] was exhibited a list of items taken from the following locations:

b6
b7C

Drawer 2 of Cabinet 1
Department of Justice (DOJ) File 14,
Drawers 1 and 2 of File Cabinet 10
DOJ File 17, Drawer 1 and 2 of File
Cabinet 15
Cabinet 1, Drawer 1 of R. L. Shackelford's
office
Cabinet 1, Drawer 2, of R. L. Shackelford's
office
Cabinet 1, Drawer 5, of R. L. Shackelford's
office
Drawer 3 of [redacted] office
DOJ File 5, Drawer 2, of [redacted]
office.
DOJ File 6, Drawer 1, of [redacted]
office
DOJ File 6, Drawer 3, of [redacted]
office
DOJ File 7, Drawer 5, of [redacted]
office.

b6
b7C

[redacted] stated he had no idea what was contained in these files as he would not have had occasion to look at them.

b6
b7C

[redacted] advised that in August, 1976, [redacted] who was then secretary for Section IS-2, told him to destroy certain ticklers. These

b6
b7C

Interviewed on November 27, 1978 at Washington, D. C. File # _____

b6
b7C

by [redacted] Date dictated November 27, 1978

FEDERAL BUREAU OF INVESTIGATION

Date of transcription November 27, 1978

ticklers were located in two two-drawer safes in Section Chief R. L. Shackelford's office. [] did not read any of the ticklers but merely pulled them out and placed them in confidential trash bags. He stated he then left the trash bags in the Front Office where they would subsequently have been picked up. [] said this was the normal procedure at the time since the chutes now utilized were not yet operational at that time. [] stated he was assisted by another clerk, []

b6
b7C

[] advised he could offer no additional information which would assist in this investigation.

b6
b7C

Interviewed on November 27, 1978 at Washington, D. C. b6 File # _____
b7C

by []

Date dictated November 27, 1978

FEDERAL BUREAU OF INVESTIGATION

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DATE 02-28-2009 BY 65179 dmh/baw/sbs

Date of transcription November 27, 1978

[redacted] was advised of the identities of the interviewing Agents and of the nature of the inquiry. She stated that she is presently the secretary for [redacted] Voucher Payroll Section and that she has been in that position approximately one year. Prior to that she worked in the Research Section of the Public Affairs Office and prior to that she was the secretary for the Assistant Section Chief and Leave Clerk for Internal Security Section (IS-2). [redacted] currently resides at [redacted] Falls Church, Virginia, telephone number [redacted]

b6
b7C

[redacted] was exhibited a list of items taken from the following locations:

b6
b7C

Drawer 2 of Cabinet 1
Department of Justice (DOJ) File 14,
Drawers 1 and 2 of File Cabinet 10
DOJ File 17, Drawer 1 and 2 of File
Cabinet 15
Cabinet 1, Drawer 2, of R. L. Shackelford's
office
Cabinet 1, Drawer 2, of R. L. Shackelford's
office
Cabinet 1, Drawer 5, of R. L. Shackelford's
office
Drawer 3 of [redacted] office
DOJ File 5, Drawer 2, of [redacted]
office
DOJ File 6, Drawer 1, of [redacted]
office
DOJ File 6, Drawer 3, of [redacted]
office
DOJ File 7, Drawer 5, of [redacted]
office

b6
b7C

[redacted] advised that she was not familiar with any of these files, either specifically or generally. She stated she had no occasion to look at these files. She stated that she never destroyed or transferred any of these files nor did she ever receive orders to, or give orders to, destroy or transfer any of these files.

b6
b7CInterviewed November 27, 1978 at Washington, D.C.b6
b7C File #

by

[redacted] Date dictated November 27, 1978

FEDERAL BUREAU OF INVESTIGATION

Date of transcription November 27, 1978

[] advised that she never saw these files destroyed or transferred by anyone.

b6
b7c

[] advised she had no additional information to assist the interviewing Agents.

b6
b7c

Investigation on _____ at _____ File # _____

by _____ Date dictated _____

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Greenberg/Gray-2767

This is a Xerox copy of tickler files removed from the Front Office of the Intelligence Division by the Task Force and later returned. The files were again removed on 10/21/76 as indicated below.

INGRAM FRONT OFFICE, ROOM 4026
DOJ FILE #19

Safe Type Combination/Lock

✓ Drawer Title: Special Cases and Misc. Briefs

✓ Elsur Policy Folders, Vols. 1, 2, 3 X

✓ ~~GAO Review of FBI, Vols. 1, 2, 3~~

✓ "Surreptitious Entries", one folder X

✓ Drawer Title: "Defense Plans"

One folder each: ~~"Director's Testimony re. Elsur"~~

~~"Review Domestic Int Investigations"~~

~~"GAO Review of FBI"~~

*to all Scott
11/11/76*

*Received all spent lined out items
done from*

[Redacted]

10/21/76

[Redacted]

SA, FBI

[Redacted]

b2
b6
b7C

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#1

Greenberg/Gray-2768

*line
LAP
11/27/78*

INVENTORY

Ingram F/O Rm 4026

Safe Type Comb/Lock

Drawer Title: Special Cases
& Misc. Briefs

~~Elsur Policy Folders vols 1, 2, 3~~

~~GAO Review of FBI vols 1, 2, 3~~

~~"Surroptitious Entries" one folder~~

Drawer Title: "Defense Plans."

~~One folder each: "Director's Testimony re: Elsur"~~

~~"Review Domestic Int Investigations"~~

~~GAO Review of FBI"~~

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b2
b6
b7C

sent
KAD
11/27/78

~~SECRET~~

Greenberg/Gray-2779

Received 1/22/78 from Robert L. Shackelford:

- should be 6/6 2/78 etc 6/28/79*
- (S) 1. Looseleaf binder [redacted] 10 loose documents b1
[redacted]
- (S) 2. Looseleaf binder [redacted] 9 loose documents (S) b1
- (S) 3. [redacted] (TS) b1
4. Certification of [redacted] (U) b6 b7C
- (S) 5. [redacted] (TS) b1
- (S) 6. Memo Putman to Miller 10/16/73 [redacted] etc (U) b6 b7C
7. [redacted] (TS) b1
- (S) 8. [redacted] b1
[redacted]
- (S) 9. [redacted] (TS) b1
[redacted] (TS)
10. Director FBI to AG 11/28/75 w/encl (U)
Director FBI to AG 11/25/75 w/encl (U)
Director FBI to AG 11/25/75 w/encl (U)
Director FBI to AG 11/7/75 w/encl. (U)
11. Copy of Deposition of Robert Shackelford 4/28/76 with corrections (U)
12. Gray to AD's 4/27/73
TT. FBI officials to Nixon 4/30/73
Gray RS 2/5/?
Smith to Miller 2/2/73 FBI Intelligence Letter etc.
13. Rubber banded package: 16 loose documents, 1 pkg notes, notes
and clippings on review of Senstudy Report
14. Folder "Techniques: 5 loose documents (U)
6/10/75 Legal Justification
undated (re Techniques)
9/10/72 Smith to Miller - Expansion
12/15/72 Shackelford to Miller - Jaroslav etc.
4/21/76 Pottinger to Director - SE
- (S) 15. Folder [redacted] 32 loose documents b1
(all except 6 under clip [redacted])
16. Folder - Undercover Volunteers" 61 loose documents
(only 1 under clip) (bio sketches and policy) (U)
- (S) 17. Folder [redacted] 59 loose documents b1
3 packages: [redacted]
- (S) 18. Folder - [redacted] 51 documents, all clipped - some
have notes stapled to each [redacted] b1

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DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(1)
DATE 02-28-2009

~~SECRET~~

s/ [redacted]

b6
b7C

~~SECRET~~

103

1 volume small loose leaf binder re conference notes retained by
Mr. Shackelford.

Greenberg/Gray-2780

~~SECRET~~

Original FD-302
Enclosed. Do not
mark. rwe/khl

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ENCLOSURE



ENCLOSURE

62-118045-106

ENCLOSURE

Empty

Enclosure

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Greenberg/Gray-2782

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. *SA* _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

UP-046

D W

(FBI)

WASHINGTON (UPI) - A FEDERAL JUDGE MUST DECIDE WHETHER FORMER TOP-RANKING FBI OFFICIALS, ACCUSED OF APPROVING ILLEGAL BREAK-INS, HAVE BEEN UNJUSTLY DENIED ACCESS TO CLASSIFIED DOCUMENTS.

IF U.S. DISTRICT JUDGE WILLIAM BRYANT AGREES THOSE DOCUMENTS ARE VITAL TO THE DEFENSE IN THE UNPRECEDENTED CONSPIRACY CASE, HE IS EXPECTED TO GO ALONG WITH A FORMAL MOTION FILED WEDNESDAY AND DISMISS THE CHARGES.

A LAWYER FOR FORMER FBI INTELLIGENCE CHIEF EDWARD S. MILLER, ONE OF THREE OFFICIALS CHARGED WITH AUTHORIZING THE ILLEGAL SURVEILLANCE, FILED THE MOTION FOR DISMISSAL ON GROUNDS PROSECUTORS HAVE REFUSED TO TURN OVER VITAL MATERIAL.

SPECIFICALLY, ATTORNEY THOMAS KENNELLY ARGUED THE PROSECUTION IS BOUND BY AN ORDER FROM THE JUDGE TO PROVIDE DOCUMENTS DETAILING CONTACTS BETWEEN THE RADICAL WEATHER UNDERGROUND AND FOREIGN GOVERNMENTS DURING THE EARLY 1970S.

MILLER IS CHARGED WITH FORMER ACTING FBI DIRECTOR L. PATRICK GRAY AND W. MARK FELT, THE BUREAU'S FORMER NO. 3 MAN, WITH APPROVING THE SURVEILLANCE IN A HUNT FOR FUGITIVE MEMBERS OF THE TERRORIST GROUP.

MILLER AND FELT, WHO FACE TRIAL FIRST, CONTEND THEY APPROVED THE BREAK-INS AS A LEGAL FOREIGN COUNTER-INTELLIGENCE MEASURE BECAUSE THE WEATHERMAN GROUP HAD CONTACTS WITH HOSTILE FOREIGN GOVERNMENTS.

UPI 04-05 11:53 AES

FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

No Duplication Fees are charged for Deleted Page Information Sheet(s).

Total Deleted Page(s) ~ 98

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